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MARTIN'S

PRACTICE OF CONVEYANCING;

WITH

Forms of Assurances.

BY

CHARLES DAVIDSON,

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PRECEDENTS IN CONVEYANCING.

WILLS.

General observations.

THE preparation of Wills is one of the draftsman's most difficult tasks, partly from testators being more at liberty to indulge their own caprices than settlors and those who have to deal with other parties; and partly from the circumstance that a will does not take effect from its execution, but must always, to some extent, contemplate as well the existing relations of the testator, as those which may be subsisting at his death. In wills disposing of real estate in the way of strict settlement, precedents are extremely useful; for, the order of limitations being once determined, the precedents give the forms: but in wills of personal estate, except those of the simplest class, the aid derived from precedents is very slight. The draftsman must rely chiefly on his own acuteness and experience, to assure him that he has provided for all the different circumstances which may arise; and that he has so disposed of his entire principal and income, as to leave no room for resulting trusts or conflicting claims. In this view, a very principal object is, that there should be adequate directions for the application or accumulation of the income of all sums given to infant children, and of all sums which may not become absolutely vested immediately upon the testator's death. The draftsman must take heed, too, that he keeps within the limits of the law as to perpetuities, which, if he obeyed the wishes of testators, he would very frequently transgress. Some of the principal points relating to the framing of wills, are noticed in the following pages, and others will be found in the first volume of this work, Art. WILLS; but the student must also have recourse to the larger works on this complicated and important subject. Those of Mr. Jarman (Powell on Devises, by Jarman and Bythewood's Conveyancing by Jarman, vol. 10) possess the highest merit. The valuable work of Mr. Williams on the Law of Executors is also indispensable, and the recent act for the amendment of the laws with respect to wills (1 Vict. c. 26.) must, of course, be kept in view.

I.

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

WILL *of* REAL *and* PERSONAL ESTATE. BEQUEST *of* HOUSEHOLD GOODS *and* FURNITURE, *and Pecuniary* LEGACY *to the Testator's* WIFE. BEQUEST *of Pecuniary* LEGACIES, *one being to the* SEPARATE USE *of a Woman.* GENERAL DEVISE *and Bequest of* REAL *and* PERSONAL *Estate in* TRUST *for* SALE. THE MONIES *arising therefrom (after Payment of Funeral and Testamentary Expenses, Debts, and Legacies) to be* INVESTED, *and the* INCOME *paid to the* WIFE *during her* WIDOWHOOD, *and, subject thereto, the* CAPITAL *to be divided among the* TESTATOR'S CHILDREN *as the* WIFE *shall* APPOINT, *and,* IN DEFAULT *of Appointment, among Sons attaining Twenty-one, and Daughters attaining that Age, or Marrying, equally.* HOTCHPOT, ADVANCEMENT, MAINTENANCE, *and* ACCUMULATION *Clauses.* BEQUEST *in* DEFAULT *of* CHILDREN *becoming entitled.* POWER *of* LEASING *for Twenty-one Years.* RENTS *and* PROFITS *till Sale to go as the Income of the Investments.* DEVISE *of* TRUST *and* MORTGAGE *Estates.* APPOINTMENT *of* GUARDIANS. APPOINTMENT *of* EXECUTORS, *with Power to arrange and compromise.* POWER *for the* EXECUTORS *and* TRUSTEES *to give* RECEIPTS. POWER *to appoint* NEW TRUSTEES. CLAUSES *for the* INDEMNITY *of the* TRUSTEES *and the* PAYMENT *of their* EXPENSES.

I, A. B., of &c., do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and

declare this to be my last will and testament. I GIVE AND BEQUEATH unto my wife C. D., all my pictures, prints, books, plate, linen, china, wines, liquors, provisions, household goods, furniture, horses, carriages, chattels, and effects whatsoever, which, at the time of my death, shall be in, or about, or belonging to, or appropriated for my mansion-house of ——, or any other dwelling-house which, at the time of my death, shall be my principal place of residence, and in or about or to or for the stables, coach-houses, outbuildings, gardens, and pleasure-grounds, to such mansion-house or dwelling-house respectively belonging (*a*). I GIVE AND BEQUEATH to my said wife the sum of £——, to be paid to her within one calendar month after my death, but without interest in the mean time (*b*). I GIVE AND BEQUEATH to —— the sum of £——, to be paid to him within —— calendar months after my death (*c*), but without in-

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

Gift to wife of household goods and furniture;

—and of a pecuniary legacy.

Gift of a legacy without interest;

(*a*) In the case of a specific legacy of goods at a particular place, the legacy will be adeemed by their removal in the testator's lifetime. (*Green* v. *Symonds*, 1 Bro. C. C. 129, n.: *Heseltine* v. *Heseltine*, 3 Madd. 276: *Colleton* v. *Garth*, 6 Sim. 19: unless perhaps they were removed to preserve them, as from the house taking fire, (*Chapman* v. *Hart*, 1 Ves. sen. 271, 273); or where they are removed by fraud, or without the testator's knowledge or authority, (*Shaftesbury* v. *Shaftesbury*, 2 Vern. 747); or where the locality is only referred to by way of identification, as of certain specified goods in a ship; (*Chapman* v. *Hart*, ubi supra). And where a testator gave all his plate and linen in his house in S., (his town house), and he had but one set, which was usually removed with him from his town to his country house, and vice versâ; and at the time of his death was in his country house, it was held that the legacy was not adeemed. (*Land* v. *Devaynes*, 4 Bro. C. C. 537. See, too, *Douglas* v. *Congreve*, 1 Keen, 410).

Ademption of specific legacies of goods by removal.

(*b*) The object of this legacy is to provide the wife with the means of defraying her immediate expenses, as the annual income afterwards provided for her will not probably be available for some time after the testator's death.

(*c*) Legacies are generally payable at the end of a year from the testator's death; and even if an earlier payment be directed by the testator, the executor cannot be compelled to make it, as he is entitled to take the twelvemonth to ascertain the state of the property. (*Wood* v. *Penoyre*, 13 Ves. 333, 334: *Pearson* v. *Pearson*, 1 Scho. & Lef. 11, 12: *Benson* v. *Maude*, 6 Madd. 15: *Brooke* v. *Lewis*, 6 Madd. 358; Williams on

Time of payment of legacies.

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

terest in the mean time. I GIVE AND BEQUEATH to —— the sum of £——, to be paid to her within —— calendar months after my death, but without interest in the mean time, for her sole and separate use, independently and exclusively of her husband (if any) for the time being, and not to be subject to his debts, control, interference, or engagements, and so that the receipt of the said —— shall be a sufficient discharge for the same (*d*). I GIVE AND

—and of another to the separate use of a married woman.

Executors, Pt. III., book iii., ch. 4, sect. 4. An earlier payment would however be made, by the direction of the Court, after a suit in which it had been ascertained that there were no debts. (*Garthshore* v. *Chalie*, 10 Ves. 13). Pecuniary legacies given to infants on their attaining twenty-one, will not be accelerated by a direction that all legacies shall be paid within six months after the testator's death. (*Frost* v. *Capel*, 2 Beav. 184).

Trusts for the separate use of married women;

(*d*) See the observations with respect to framing trusts for the separate use of married women, ante, Vol. 4, p. 316, n. (*g*); and see the recent case of *Wardle* v. *Claxton*, 9 Sim. 524.

—when discoverte at the creation of the trust, and afterwards becoming coverte.

The discussions which have been for some years carried on as to the validity of trusts for the separate use of women unmarried at the creation of the trust, but who subsequently marry, appear to have been concluded by the decisions in favour of their validity, pronounced in *Tullett* v. *Armstrong*, and *Scarborough* v. *Borman*, 1 Beav. 1 & 34: confirmed on appeal, 4 My. & Cra. 377. See, too, the cases of *Clark* v. *Jaques*, 1 Beav. 36: *Dixon* v. *Dixon*, 1 Beav. 40: and *Newlands* v. *Paynter*, 4 My. & Cra. 408. It is needless to go into the subject in the present note, as the principles are fully discussed, and all the previous cases cited, in *Tullett* v. *Armstrong*; but it may be useful to present the reader with the view given by the Master of the Rolls of the present law on the subject:—

"I think it right," said his Lordship, "to state, that it appears to me, as the result of the authorities, and of the constant practice of conveyancers, which great and eminent judges have considered to be no mean evidence of the law,—

"That property given to a woman for her separate use, independent of any husband, may, under the authority of this Court, be enjoyed by her during her coverture as her separate estate, although the property originally, or at any subsequent period or periods of time, became vested in her when discoverte.

"That in respect of such separate estate, she is by this Court considered as a feme sole, although coverte. Her faculties as such, and the nature and extent of them, are to be collected from the terms in which the gift is made to her, and will be supported by this Court for her protection.

"The words 'independent of a husband,' whether expressed or implied

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DEVISE all and every the manors, messuages, lands, tenements, hereditaments, and real estate, wheresoever situate, and of what nature or tenure soever, of or to which I am now or at the time of my death shall or may be seised or entitled, either at law or in equity, for any devisable estate or interest, or of which I now have power to dispose by this my will (except what I otherwise devise or dispose of by this my will, or any codicil hereto) (*e*), unto and to the use

General devise of real estate,

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in the terms of the gift, mean no more than that this Court will not permit the marital power of the husband to be used in contravention of the enjoyment of the property according to the terms of the gift.

"If the gift be made for her sole and separate use, without more, she has, during the coverture, an alienable estate independent of her husband.

"If the gift be made for her sole and separate use, without power to alienate, she has, during the coverture, the present enjoyment of an unalienable estate independent of her husband.

"In either of these cases, she has, when discoverte, a power of alienation, the restraint is annexed to the separate estate only, and the separate estate has its existence only during coverture; whilst the woman is discoverte the separate estate, whether modified by restraint or not, is suspended, and has no operation, though it is capable of arising upon the happening of a marriage. The restriction cannot be considered distinctly from the separate estate, of which it is only a modification; to say that the restriction exists, is saying no more than that the separate estate is so modified; the donor, in giving the woman, when married, some of the faculties of a feme sole, has withheld the power of alienation under the terms of the gift, and by the aid of this Court the woman is a feme sole as to the present enjoyment of the property, but no further, measuring her faculty by the terms of the gift; she is not a feme sole as to the disposition of her property in anticipation of her intended provision. If there be no separate estate, there can be no such restriction as that which is now under consideration. The separate estate may, and often does, exist without the restriction, but the restriction has no independent existence; when found, it is a modification of the separate estate and inseparable from it."

The latest case on this subject is *Newlands* v. *Paynter*, in which it was held, that personal chattels bequeathed to a single woman for her separate use, though without the intervention of a trustee, cannot be seized in execution by a judgment creditor of an after-taken husband. (*Newlands* v. *Paynter*, 4 My. & Cr. 408; see, however, *Carne* v. *Brice*, 7 Mee. & Wels. 183).

(*e*) As to what may be devised by will, see 1 Pow. Dev. by Jarm. chaps. 1, 2, 3, 6, and the stat. 1 Vict. c. 26, sects. 3, 26, 27. See,

What may be devised by will.

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

In trust for sale.

of E. F. of &c., G. H. of &c., and I. K. of &c., their heirs, executors, administrators, and assigns, according to the nature and tenure thereof, UPON TRUST that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall, as soon as conveniently may be after my death, absolutely sell and dispose of the said manors, messuages, lands, tenements, hereditaments, and real estate, either entirely and altogether, or in parcels, and either by public auction or private contract, for such price or prices, or sum or sums of money, as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators respectively of such survivor, shall think reasonable, with power to buy in the said premises, or any part thereof, at any sale or sales by auction, and to rescind, abandon, or vary any contract for sale, and to resell the premises which shall be so bought in, or the contract for the sale of which shall be so rescinded or abandoned as aforesaid, without being in anywise answerable for any loss which may happen thereby respectively, and also with power to insert any special or other stipulations in any contract for or conditions of sale, either as to title, or evidence of title, or otherwise, and with power to enter into, make, execute, do, and perform all such contracts, agreements, conveyances, assurances, acts, deeds, matters, and things, as to them the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators respectively of such survivor, shall seem meet (*f*); AND DO AND SHALL stand possessed of and interested in the purchase-money to arise from the sale and sales aforesaid, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same. I GIVE AND BE-

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too, as to devises of rights of entry—*Culley* v. *Doe* d. *Taylerson*, 3 Per. & Dav. 539.

(*f*) See as to trusts for sale, the notes ante, Vol. 3, pp. 290—292; Lewin's Law of Trusts, ch. xix.

QUEATH all the money, securities for money, goods, chattels, rights, credits, and other personal estate whatsoever and wheresoever, of or to which I am now or at the time of my death shall or may be possessed or entitled, either at law or in equity, for any estate or interest which can be bequeathed by will, or of which I now have power to dispose by this my will, (except chattels real included in the general devise hereinbefore contained of real estate (*g*), and except what else I otherwise bequeath or dispose of by this my will, or any codicil hereto), unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, UPON TRUST that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, as soon as conveniently may be after my death, call in, sell, dispose of, and convert into money, all such, and so many, and such part and parts of the said money, securities for money, goods, chattels, rights, credits, and other personal estate, as shall not consist of ready money, AND DO AND SHALL stand and be possessed of, and interested in, the money to arise from such calling in, sale, disposition, and conversion into money, and of and in the ready money of or to which I shall be possessed or entitled at the time of my decease, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same; AND I HEREBY DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall stand possessed of and interested in the monies to arise from the sale or sales of the said manors, messuages, lands, tenements, hereditaments, and real estate hereinbefore devised

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General bequest of personalty.

In trust for sale and conversion into money.

Declaration of the trusts of the money produced by the real and personal estate.

(*g*) See supra, note (*e*). A general devise of real estate will now pass leaseholds and copyholds as well as freehold estate, reversing the ancient rule of law at least as to leaseholds for years. 1 Vict. c. 26, sect. 26; 2 Pow. Dev. by Jarm. chaps. 7, 8. *Doe* d. *Clarke* v. *Ludlam*, 7 Bing. 275: *Doe* d. *Smith* v. *Bird*, 5 B. & Ad. 695: *Doe* d. *Edmunds* v. *Llewellin*, 2 Cro. Mee. & Ros. 583: *Weigall* v. *Brome*, 6 Sim. 99.

General devise passes leaseholds and copyholds.

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

in trust for sale, and from the calling in, sale, disposition, and conversion into money of all such, and so many, and such part and parts as are hereinbefore directed to be called in, sold, disposed of, and converted into money, of the said money, securities for money, goods, chattels, rights, credits, and other personal estate lastly hereinbefore bequeathed, and of and in the said ready money of or to which I shall be possessed or entitled at the time of my death, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors and administrators respectively of such survivor, do and shall, by and out of the same, pay and discharge my funeral and testamentary expenses and debts, and the costs and expenses to be incurred in or about the sale or sales, calling in, disposition, or conversion into money aforesaid, or otherwise, in or about the execution of the trusts aforesaid, or in relation thereunto, and the legacies bequeathed by this my will, or any codicil hereto(*h*), AND DO AND SHALL lay out and invest the surplus or residue of the said monies in the names or name of them, the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, but not in Ireland(*i*); AND I DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall from time to time, (if and when they or he shall think fit so to do), alter, vary, and transpose the said stocks, funds, and securities, into or for other stocks, funds, or securi-

To pay funeral and testamentary expenses, debts, and legacies;

—and to invest the residue;

—with power to vary the investments;

Order of payment.

(*h*) The direction in the text as to the order of payment follows the rule of law which directs the payment, in the first instance, of funeral expenses; then of the expenses of probate or administration; then of the testator's debts; and then of his legacies. (2 Wms. Law of Executors, Part III., book ii, chs. 1, 2; Book iii., Introd.).

(*i*) As to the necessity of an express restriction against lending monies on real securities in Ireland, see ante, Vol. 4, p. 312, n. (*e*).

ties of the same or a like nature, at their or his discretion (*k*), AND DO AND SHALL pay the interest, dividends, and annual proceeds of the said trust monies, stocks, funds, or securities to, or permit the same to be received by, my said wife during her life, or during such part thereof as she shall remain my widow unmarried: AND FROM AND AFTER her death or marriage, which shall first happen, do and shall stand possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual proceeds thereof, IN TRUST for all and every or such one or more, exclusively of the others or other of my children, who shall be living at my death, with such provision for their respective maintenance and education, or advancement at such age, day, or time, or respective ages, days, or times, if more than one, in such parts, shares, and proportions, and with such annual sums of money and limitations over for the benefit of my said children, or some or one of them, and upon such conditions, with such restrictions, and in such manner as my said wife shall from time to time, or at any time so long as she shall remain unmarried, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament, or any codicil or codicils thereto, or any writing in the nature of or purporting to be a will or codicil, direct or appoint: AND IN DEFAULT of any such direction or appointment, and so far as no such direction or appointment shall extend, IN TRUST for all and every of my said children who shall be living at my death, and who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, if more than one, in equal shares, and if there shall be but one such

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—and in trust to pay the income to testator's wife, for her life or widowhood;.

—and afterwards to hold the funds in trust for testator's children, as his wife shall appoint;

—and in default of appointment, in trust for all the testator's children who, being sons, attain 21, or, being daughters, attain that age, or marry.

(*k*) As to the trusts for investment and varying securities, see ante, Vol. 4, p. 313., n. (*f*). See further as to the duty of trustees to change securities, and to invest in 3*l.* per cent. Bank Annuities, *Pickering* v. *Pickering*, 2 Beav. 31 : see, too, 9 Sim. 641. As to the obligation of trustees to make good losses occasioned by improper dealings with the trust securities, see *Goodwin* v. *Clewley*, 2 Beav. 30.

Trusts for investment and varying securities.

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

child, the whole to be in trust for that one child (*l*). PROVIDED ALWAYS, and I do hereby declare my will to be, that no child or children, taking any part of the said trust monies, stocks, funds, and securities, under or by virtue of any direction or appointment to be made by my said wife in pursuance of the power or authority hereinbefore contained, shall have or be entitled to any further or other share of or in that part of the said trust monies, stocks, funds, and securities of which no such direction or appointment shall have been made as aforesaid, without bringing his, her, or their appointed share or shares into hotchpot, and accounting for the same accordingly (*m*). PROVIDED ALWAYS, and I do hereby declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times after the decease or second marriage, whichever shall first happen, of my said wife, or previously thereto, in case she shall so direct by any writing or writings under her hand, to levy and raise any part or parts of the then expected or presumptive or then vested portion or portions of any of my son or sons under the trusts hereinbefore declared, not exceeding in the whole for any such son one equal moiety or half part or share of his then expectant or presumptive or then vested portion, and to pay and apply the same for his or their preferment, advancement, or benefit, in such manner as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit (*n*). AND I DO HEREBY DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall after the decease or second marriage, whichever shall first happen, of my said wife, pay and apply the whole or such part as the said E. F., G. H., and I. K., and the survivors and survivor

Hotchpot clause.

Advancement clause.

Maintenance clause.

(*l*) See ante, Vol. 4, p. 318, n. (*i*). (*m*) See ante, Vol. 4, p. 319. n. (*k*).
(*n*) See ante, Vol. 4, p. 320, n. (*l*).

of them, and the executors and administrators of such survivor, shall think fit, of the interest, dividends, and annual produce of the portion or respective portions to which any child or children shall or may for the time being be entitled in expectancy under the trusts hereinbefore declared, for and towards the maintenance and education of such child or children respectively in the mean time, until such his, her, or their then expectant portions shall become payable; AND DO AND SHALL, during such suspense of absolute vesting as aforesaid, accumulate all the residue thereof (if any) in the way of compound interest, by investing the same and all the resulting income and produce thereof, from time to time, in or upon any such stocks, funds, and securities as are hereinbefore mentioned, for the benefit of the person or persons who under the trusts herein contained shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee for the time being to resort to the accumulation of any preceding year or years, and to apply the same as to such trustees or trustee shall seem meet towards the maintenance and education of the child or children who shall for the time being be presumptively entitled to the same respectively, in like manner as such accumulations might have been applied under the power hereinbefore contained, in case the same accumulations had been interest, dividends, or annual produce arising from the original trust fund in the year in which the same shall be so applied for maintenance and education (*o*). AND IF there shall be no child of mine who shall be living at my death, and who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age, or marry, then and in such case, from and after the death or marriage of my said wife (whichever shall first happen), and such default or failure of children as aforesaid, which shall last happen, I GIVE AND BEQUEATH the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

Accumulation clause.

Disposition in default of children entitled under the preceding trusts.

(*o*) See ante, Vol. 4, p. 321, n. (*m*).

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

child, the whole to be in trust for that one child (*l*). PROVIDED ALWAYS, and I do hereby declare my will to be, that no child or children, taking any part of the said trust monies, stocks, funds, and securities, under or by virtue of any direction or appointment to be made by my said wife in pursuance of the power or authority hereinbefore contained, shall have or be entitled to any further or other share of or in that part of the said trust monies, stocks, funds, and securities of which no such direction or appointment shall have been made as aforesaid, without bringing his, her, or their appointed share or shares into hotchpot, and accounting for the same accordingly (*m*). PROVIDED ALWAYS, and I do hereby declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times after the decease or second marriage, whichever shall first happen, of my said wife, or previously thereto, in case she shall so direct by any writing or writings under her hand, to levy and raise any part or parts of the then expected or presumptive or then vested portion or portions of any of my son or sons under the trusts hereinbefore declared, not exceeding in the whole for any such son one equal moiety or half part or share of his then expectant or presumptive or then vested portion, and to pay and apply the same for his or their preferment, advancement, or benefit, in such manner as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit (*n*). AND I DO HEREBY DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall after the decease or second marriage, whichever shall first happen, of my said wife, pay and apply the whole or such part as the said E. F., G. H., and I. K., and the survivors and survivor

Hotchpot clause.

Advancement clause.

Maintenance clause.

(*l*) See ante, Vol. 4, p. 318, n. (*i*). (*m*) See ante, Vol. 4, p. 319. n. (*k*).
(*n*) See ante, Vol. 4, p. 320, n. (*l*).

of them, and the executors and administrators of such survivor, shall think fit, of the interest, dividends, and annual produce of the portion or respective portions to which any child or children shall or may for the time being be entitled in expectancy under the trusts hereinbefore declared, for and towards the maintenance and education of such child or children respectively in the mean time, until such his, her, or their then expectant portions shall become payable; AND DO AND SHALL, during such suspense of absolute vesting as aforesaid, accumulate all the residue thereof (if any) in the way of compound interest, by investing the same and all the resulting income and produce thereof, from time to time, in or upon any such stocks, funds, and securities as are hereinbefore mentioned, for the benefit of the person or persons who under the trusts herein contained shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee for the time being to resort to the accumulation of any preceding year or years, and to apply the same as to such trustees or trustee shall seem meet towards the maintenance and education of the child or children who shall for the time being be presumptively entitled to the same respectively, in like manner as such accumulations might have been applied under the power hereinbefore contained, in case the same accumulations had been interest, dividends, or annual produce arising from the original trust fund in the year in which the same shall be so applied for maintenance and education (*o*). AND IF there shall be no child of mine who shall be living at my death, and who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age, or marry, then and in such case, from and after the death or marriage of my said wife (whichever shall first happen), and such default or failure of children as aforesaid, which shall last happen, I GIVE AND BEQUEATH the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

Accumulation clause.

Disposition in default of children entitled under the preceding trusts.

(*o*) See ante, Vol. 4, p. 321, n. (*m*).

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

child, the whole to be in trust for that one child (*l*). PROVIDED ALWAYS, and I do hereby declare my will to be, that no child or children, taking any part of the said trust monies, stocks, funds, and securities, under or by virtue of any direction or appointment to be made by my said wife in pursuance of the power or authority hereinbefore contained, shall have or be entitled to any further or other share of or in that part of the said trust monies, stocks, funds, and securities of which no such direction or appointment shall have been made as aforesaid, without bringing his, her, or their appointed share or shares into hotchpot, and accounting for the same accordingly (*m*). PROVIDED ALWAYS, and I do hereby declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times after the decease or second marriage, whichever shall first happen, of my said wife, or previously thereto, in case she shall so direct by any writing or writings under her hand, to levy and raise any part or parts of the then expected or presumptive or then vested portion or portions of any of my son or sons under the trusts hereinbefore declared, not exceeding in the whole for any such son one equal moiety or half part or share of his then expectant or presumptive or then vested portion, and to pay and apply the same for his or their preferment, advancement, or benefit, in such manner as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit (*n*). AND I DO HEREBY DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall after the decease or second marriage, whichever shall first happen, of my said wife, pay and apply the whole or such part as the said E. F., G. H., and I. K., and the survivors and survivor

Hotchpot clause.

Advancement clause.

Maintenance clause.

(*l*) See ante, Vol. 4, p. 318, n. (*i*). (*m*) See ante, Vol. 4, p. 319. n. (*k*).
(*n*) See ante, Vol. 4, p. 320, n. (*l*).

of them, and the executors and administrators of such survivor, shall think fit, of the interest, dividends, and annual produce of the portion or respective portions to which any child or children shall or may for the time being be entitled in expectancy under the trusts hereinbefore declared, for and towards the maintenance and education of such child or children respectively in the mean time, until such his, her, or their then expectant portions shall become payable; AND DO AND SHALL, during such suspense of absolute vesting as aforesaid, accumulate all the residue thereof (if any) in the way of compound interest, by investing the same and all the resulting income and produce thereof, from time to time, in or upon any such stocks, funds, and securities as are hereinbefore mentioned, for the benefit of the person or persons who under the trusts herein contained shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee for the time being to resort to the accumulation of any preceding year or years, and to apply the same as to such trustees or trustee shall seem meet towards the maintenance and education of the child or children who shall for the time being be presumptively entitled to the same respectively, in like manner as such accumulations might have been applied under the power hereinbefore contained, in case the same accumulations had been interest, dividends, or annual produce arising from the original trust fund in the year in which the same shall be so applied for maintenance and education (*o*). AND IF there shall be no child of mine who shall be living at my death, and who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age, or marry, then and in such case, from and after the death or marriage of my said wife (whichever shall first happen), and such default or failure of children as aforesaid, which shall last happen, I GIVE AND BEQUEATH the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or so much thereof respectively as shall not have

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

Accumulation clause.

Disposition in default of children entitled under the preceding trusts.

(*o*) See ante, Vol. 4, p. 321, n. (*m*).

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become vested, or been applied under any of the trusts or powers herein contained, Unto &c. (*p*). PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, at any time or times before the said hereditaments and real estate hereinbefore devised in trust for sale shall have been sold, by any indenture or indentures, to be sealed and delivered by them respectively in the presence of and to be attested by two or more credible witnesses, to demise or lease all or any parts or part of the said hereditaments and real estate, or of the unsold part thereof for the time being, to any person or persons for any term or number of years absolutely, not exceeding twenty-one years, to take effect in possession, and not in reversion, or by way of future interest, so as there be reserved on every such demise or lease the best or most improved yearly rent or rents, to be incident to the immediate reversion of the hereditaments so to be demised or leased, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or any thing in the nature of a fine, premium, or foregift, for the making thereof, and so as there be contained in every such demise or lease a condition of re-entry for non-payment within a reasonable time, to be therein specified, of the rent or rents thereby to be reserved, and so as the appointee or appointees, lessee or lessees do execute a counterpart thereof, and do thereby covenant for the due payment of the rent or rents thereby to be reserved, and be not by any clause or words therein contained made dispunishable for waste, or exempted from punishment for committing waste. AND I HEREBY further declare my will to be, that in the mean time, and until the said real and personal estate hereinbefore directed to be sold and converted into money shall have been so sold and converted into money, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respec-

Power of leasing for twenty-one years.

Rents and profits of the property until a sale and conversion to go as the income of the investments of the money to arise from the sale and conversion.

(*p*) See ante, Vol. 4, p. 322, notes (*n*) & (*o*).

tively of such survivor, do and shall pay and apply the rents, issues, and profits, interest, dividends, and annual produce of the said real and personal estate, or of so much thereof respectively, as for the time being shall not have been sold or converted into money, (after payment thereout of all rates, taxes, premiums for insurance against loss by fire, costs of repairs, and other outgoings which any tenant or tenants, or any other person or person shall not be liable to pay), to the persons for the purposes and in the manner to whom, and for and in which the interest, dividends, and annual produce of the monies to arise from the sale or conversion into money thereof, or of the stocks, funds, and securities in or upon which the same monies are hereinbefore directed to be invested, would be payable or applicable under the trusts herein contained, in case the sale or conversion into money and investment aforesaid were then actually made. I GIVE, DEVISE, ALD BEQUEATH all the estates which at the time of my decease shall be vested in me upon any trusts (*q*), or by way of mortgage, and of which I have power to dispose by this my will, with their rights, members, and appurtenances, unto the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns respectively, according to the nature and quality thereof, respectively upon the trusts and subject to the equity of redemption which at the time of my decease shall be subsisting or capable of taking effect therein respectively; but

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

Devise of trust and mortgage estates.

(*q*) If the point were new it might well be doubted whether a trustee has any more right to devise his trust estates than he has to convey them to persons not duly appointed new trustees of the trust; and whether, consequently, if he does so devise trust estates to strangers, instead of allowing them to descend to his heir at law, he does not make his own estate liable for any breach of trust which may be committed by his devisees. Custom and convenience, however, have sanctioned the practice, and it may be defended on the ground, that, as the personal confidence reposed in the trustee is at an end by his death, he will be no more responsible for devising the estate to strangers than for allowing it to descend to his heir at law. The benefit to the cestuis que trust is very evident, as they have to deal with persons who are sui juris, and easy to be come at, instead of an heir at law, who may be an infant or unknown.

Propriety of devising trust estates.

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the money secured on such mortgages to be considered and taken as part of my personal estate. AND I DO HEREBY nominate and appoint my said wife, and the said E. F., G. H., and I. K., guardians of my infant children during their respective minorities (*r*). AND I DO HEREBY nominate and appoint the said E. F., G. H., and I. K., executors of this my last will and testament, AND DO authorize and empower the executors or executor for the time being, acting in the execution of this my will, to pay and satisfy any debts owing or claimed to be owing by or from me or my estate, and any liabilities to which I or my estate may be subject, or may be alleged to be subject, upon any evidence they or he shall think proper; and to accept any composition or any security, real or personal, for any debt or debts owing to me or my estate, and to allow such time for the payment of any such debt or composition for a debt (either with or without taking security for the same), as to my said executors or executor shall seem reasonable: AND ALSO to compromise and compound, or submit to arbitration, and adjust and settle all debts, accounts, transactions, matters, and things, which shall at the time of my death be owing, or claimed to be owing from or to me or my estate, or be depending or arise between me or my said executors or executor, or any other person or persons; and for any of the purposes aforesaid, to enter into, give, sign, make, do, and execute such deeds or instruments of composition, bankrupts' certificates, releases, bonds, or instruments of submission to arbitration, and other instruments, acts, deeds, matters and things, as the said executors or executor for the time being, acting in the execution of this my will, shall think expedient, and to

Appointment of guardians.

Appointment of executors;

—with power to arrange and compromise.

Appointment of guardians by will.

(*r*) The only person who has a power to appoint guardians by will is the father of the children, and he enjoys this power only by virtue of the statute 12 Car. 2. c. 24. (See Harg. & Butl. Co. Lit. 88. b., n. (15); 1 Pow. Dev. by Jarm. 127, n. (2)). If two or more persons are appointed guardians by will, and one or more die, the office survives; (*Eyre* v. *Countess of Shaftesbury*, 2 P. Wms. 104); and therefore it is unnecessary to expressly name "the survivors and survivor," as is sometimes done. It should, however, be observed, that when guardians are appointed by the Court of Chancery, the office does not survive. (*Bradshaw* v. *Bradshaw*, 1 Russ. 528: *Hall* v. *Jones*, 2 Sim. 41).

abide by, observe, and perform, or to contest or dispute any instrument or transaction which may have been made or entered into as aforesaid, or any award or awards to be made in pursuance of any such submission to arbitration as aforesaid, and generally to act in relation to the premises in such manner as they or he shall think expedient, without being liable for any loss which may be occasioned thereby (*s*). AND I DO HEREBY DECLARE that the receipt and receipts in writing of the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, or of the trustees or trustee for the time being, acting in the execution of the trusts of this my will, for any sum or sums of money for the purchase of the said hereditaments and real estate, hereinbefore devised in trust for sale, or any part thereof, or for any other sum or sums of money which may become payable under or by virtue of this my will, or in the execution of the trusts hereof, shall be a good and effectual discharge and good and effectual discharges for the money therein respectively acknowledged to be received, and shall to all intents and purposes discharge the person or persons taking such receipt or receipts, his, her, or their heirs, executors, or administrators, from seeing to the application, or being accountable or answerable for the misapplication or non-application of the same or any part thereof (*t*). PROVIDED ALWAYS, and I do hereby declare my will to be,

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Receipts of trustees to be discharges.

Power to appoint new trustees.

(*s*) It is understood that executors have no authority to compromise or compound matters relating to their testator's estate, or to allow any claims except those of which there is strict legal evidence, and which could be enforced against them. Neither can they refer to arbitration, ante, Vol. 3, p. 124, n. (*e*). But as it is very proper and convenient that they should possess these powers, they are generally expressly clothed with them by the will.

Power of executors to compromise &c.

(*t*) As to the necessity of empowering trustees to give receipts, see ante, Vol. 3, p. 293, n. (*g*); Vol. 4, p. 324, n. (*r*). If the will do not contain any trusts, it is needless to give the executors an express power to give receipts, since by virtue of their office they can give an effectual discharge to persons dealing with them in their character of executors.

As to how far a power given to trustees survives after the death of one, see *Eaton* v. *Smith*, 2 Beav. 236.

The receipts of executors and trustees.

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that if the said trustees hereby appointed, or any (*u*) of them, or any future trustee or trustees to be appointed, as hereinafter is mentioned, shall die, or be abroad for twelve calendar months at one time, or be desirous of being discharged of and from, or refuse or decline or become incapable to act in the trusts or powers hereby in them reposed, or to them given as aforesaid, before the said trusts or powers shall have been fully executed, performed, or discharged, or shall have become incapable of effect, then, and in such case, and when and so often as the same shall happen, it shall be lawful for the surviving or continuing trustee or trustees for the time being (and for this purpose any trustee or trustees retiring from or declining to act in the aforesaid trusts shall, if willing to act in the exercise of this present power, be considered a continuing trustee or continuing trustees) (*v*), or for the executors or administrators of the last surviving or continuing trustee for the time being, by writing under their, his, or her hands or hand, to nominate, substitute, or appoint, one or more person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying or being abroad, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid; AND THAT when and so often as any new trustee or trustees shall be nominated and appointed as aforesaid, all the trust estates, monies, and premises, which shall then be vested in the trustee or trustees so being abroad, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid, either solely or jointly with the other trustee or trustees, or in the surviving trustee or trustees, or in the heirs, executors, or administrators of the last surviving trustee, (as the case may be), shall, with all convenient speed, be

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(*u*) If the trustees are only two in number, the word "either" should be substituted for "any;" see ante, Vol. 4, p. 324, n. (*s*).

(*v*) The object of this clause is to obviate the objection, that a trustee retiring is not a continuing trustee so as to be competent to exercise the power of appointing new trustees.

conveyed, assigned, and transferred, in such sort and manner, and so as that the same shall and may be legally and effectually vested in the surviving or continuing trustee or trustees, and such new and other trustee or trustees, or if there shall be no continuing trustee or trustees, then in such new trustee or trustees only, upon the trusts hereinbefore declared [of and concerning the same trust estates, monies, and premises respectively (*w*)], or such of the same trusts as may be then subsisting, or capable of taking effect; AND I DO HEREBY DECLARE, that the trustee or trustees so to be nominated, substituted, or appointed as aforesaid, shall and may, either before or after the said trust estates, monies, and premises shall have been so vested in him or them jointly or solely as aforesaid, in all things act and assist in the management, carrying on, and execution of all the trusts and powers aforesaid, in conjunction with the other then surviving or continuing trustee or trustees, if there shall be any such surviving or continuing trustee or trustees, and if not then by himself or themselves as fully and effectually, and shall and may have and exercise all the same power and powers, authority and authorities, to all intents, effects, constructions, and purposes whatsoever, as if he or they had been originally in and by this my will nominated a trustee or trustees; and as the trustee or trustees in this my will named his or their heirs, executors, or administrators, in or to whose place such new trustee or trustees shall come or succeed, are or is enabled to do, or could or might have done under and by virtue of this my will, if then living and continuing to act in the trusts or powers of this my will (*x*). PROVIDED ALWAYS, and I do hereby declare, that the said several trustees hereby nominated and appointed, or to be appointed, by virtue of the proviso lastly hereinbefore contained, and each and every of them, and the heirs, executors, administrators, and assigns of them, each and every of them, shall be charged and chargeable respectively only for such

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

Trustees' indemnity clause.

(*w*) See ante, Vol. 4, p. 325, n. (*t*).

(*x*) As to the utility and frame of powers to appoint new trustees, see ante, vol. 4, p. 326, n. (*u*).

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

monies as they shall respectively actually receive by virtue of the trusts hereby in them reposed, notwithstanding his or their, or any of their, giving or signing, or joining in giving or signing any receipt or receipts for the sake of conformity, and any one or more of them shall not be answerable or accountable for the other or others of them, or for the acts, receipts, neglects, or defaults, of the other or others of them, but each and every of them only for his and their own acts, receipts, neglects, or defaults respectively, and that any one or more of them shall not be answerable or accountable for any banker, broker, or other person with whom or in whose hands any part of the said trust monies shall or may be deposited or lodged for safe custody or otherwise, in the execution of the trusts of this my will, or any of them; or that they, or any of them, shall not be answerable or accountable for the insufficiency or deficiency of any security or securities, stocks or funds, in or upon which the said trust monies, or any part thereof shall be placed out or invested, nor for any other misfortune, loss, or damage which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same shall happen by or through their own wilful default respectively (*y*): AND ALSO that it shall be lawful for them the said trustees in this my will named, and such future trustee or trustees so to be appointed as aforesaid, and every or any of them, their and every of their heirs, executors, administrators, and assigns, by and out of the monies which shall come to their or his hands by virtue of the trusts aforesaid, to retain to and reimburse himself and themselves respectively, and also to allow to their and his co-trustee and co-trustees all costs, charges, damages, and expenses which they or any of them shall or may suffer, sustain, expend, disburse, be at, or be put unto in, or about the execution of the aforesaid trusts, or in relation thereunto. (*z*) IN WITNESS whereof, I the said

Power to the trustees to retain and reimburse themselves their expenses.

(*y*) As to the clause for the indemnity of trustees, see ante, vol. 4, p. 327, n. (*v*).

(*z*) As to the payment of trustees' expenses, see ante, vol. 4, p. 328, n. (*x*). See too the shorter trustee clauses in the next precedent.

A. B., the testator, have to this, my last will and testament, contained in this and —— preceding sheets of paper, set my hand (*aa*) this —— day of ——, 18—.

[*Testator's signature.*]

Signed, declared, and acknowledged, by the said A. B., the testator, as his last will and testament, in the presence of us present at the same time, and who, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses attesting the same. (*bb*)

[*Signatures and descriptions of witnesses.*]

OF REAL AND PERSONAL ESTATE TO BE CONVERTED INTO MONEY IN TRUST FOR WIDOW AND CHILDREN.

(*aa*) It has been usual for testators to seal as well as to sign the last sheet of the will, and also to sign each sheet of the will; probably as a security against the interpolation of a new sheet. A seal, however, was never necessary, and one signature by the testator was always sufficient, but this signature must now be "at the foot or end" of the will. 1 Vict. c. 26, sect. 9.

Sealing of wills unnecessary; how to be signed.

(*bb*) According to the statute 1 Vict. c. 26, sect. 9, every will must be in writing, and must be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and such signature must be made and acknowledged by the testator in the presence of two or more witnesses present at the same time, and each witness must attest and subscribe the will in the presence of the testator; and (by sect. 13) every will so executed, is valid without any other publication thereof. It is expresaly enacted by sect. 9, that no form of attestation shall be necessary; but a correct form should always be employed, for if it be wanting, or if an incorrect form be used, probate cannot be had, without furnishing extrinsic evidence of the due execution. If the testator have property in the colonies, the attestation should contain the word "published," and should be by three witnesses.

Execution of wills.

The witnesses must be persons not taking any interest under the will; see the statute 25 Geo. 2, c. 6. and the cases upon it collected, 1 Pow. Dev. by Jarm. 116, n. (3). *Emanuel* v. *Constable*, 3 Russ. 436; *Foster* v. *Banbury*, 3 Sim. 40. This statute has been repealed by the statute 1 Vict. c. 26. sect. 2; but by the 15th section of the same act, all beneficial gifts to attending witnesses, or to their wives or husbands are made void. A creditor, however, notwithstanding a charge of debts, may be a witness, sect. 16; and so likewise may an executor, sect. 17.

Gifts to attesting witnesses void.

II.

OF REAL AND PERSONAL ESTATE, WITH SPECIAL LEGACIES AND ANNUITIES.

WILL *of* REAL *and* PERSONAL *Estate.* CONFIRMATION *of Wife's Property.* BEQUEST *of Life* ANNUITIES *with option to one Annuitant to take a gross Sum in lieu.* BEQUEST *of* PARTICULAR DEBTS *owing from Testator's Brothers, and of Lands taken in part Payment thereof, for the Benefit of the Brothers or their Children.* GENERAL DEVISE *and* BEQUEST *of* REAL *and* PERSONAL *Estate in Trust for* SALE, *and* CONVERSION *into Money to be applied in discharge of Debts, &c. in* PROVIDING *for the* ANNUITIES, *and* A RESIDENCE *for the Testator's Wife.* GIFT *of* LEGACIES *with Interest to* CHILDREN, *to* VEST *at specified Times, with Provisions for* INVESTMENT, MAINTENANCE, ACCUMULATION, *and* ADVANCEMENT *during a* SUSPENSE *of* VESTING *and for the* DESTINATION *of Legacies* FAILING *to* VEST. TRUSTS *of* RESIDUE *for Children in certain Events, with Trusts over for other Children.* ACCUMULATION *Clause.* GENERAL POWER *of* LEASING. POWER *to permit Funds to remain invested as at Testator's Death.* DOWER *Clause.* APPOINTMENT *of Wife to be* GUARDIAN *during* WIDOWHOOD, *with further Appointment on her Death or Marriage.* LEGACIES *to* EXECUTORS *who Act.* USUAL CLAUSES.

I, A. B., of &c., do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and declare this to be my last will and testament. [*Bequest to testator's wife of household goods &c., and of an immediate*

legacy, supra, page 3.] AND WHEREAS there is a sum of money standing in the name of my said wife in the £5 per cent. Rentes of France, which was given to her by her father's will; NOW, in order to avoid any question as to her absolute right thereto, I HEREBY bequeath all my right and interest in or to the same, and all arrears thereof which may be due at my decease unto my said wife, as and for her absolute property. I ALSO BEQUEATH unto my said wife, and her assigns during her life, an annuity or yearly sum of £——, clear of all deductions whatsoever, and to be paid in preference to any other bequest made by this my will. AND I GIVE and bequeath unto my niece ——, one of the daughters of my late sister —— deceased, and her assigns during her life, an annuity or yearly sum of £——, free from legacy duty (*a*), and clear of all other deductions

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Confirmation of the wife's right to certain stock.

Gift of an annuity to testator's wife to be paid in preference to all other bequests.

Gift of an annuity to a niece free from legacy duty.

(*a*) Legacies and annuities which are directed to be paid without deductions, or are given "clear of all deductions," or "clear of all taxes and outgoings," are considered to be given free from legacy duty, and the duty is consequently to be paid out of the testator's general estate, *Barksdale* v. *Gilliat*, 1 Swanst. 562: *Smith* v. *Anderson*, 4 Russ. 352: *Dawkins* v. *Tatham*, 2 Sim. 492: *Zouch* v. *Peters*, 1 My. & Ke. 489. But a different decision was come to in the cases of *Hales* v. *Freeman*, 1 Brod. & Bing. 391; *Sanders* v. *Riddell*, 7 Sim. 536; and at all events, the point should never be left to be implied, but when a legacy or annuity is to be paid free from legacy duty, the intention should be expressly stated.

Legacy duty; when legacies and annuities are given clear from:

Where by will a legacy is given free from duty, and by codicil a new legacy is given by way of substitution for that given by the will, the substituted legacy is also to be paid free from duty; *Leacroft* v. *Maynard*, 3 Bro. C. C. 233; S. C. 1 Ves. Jun. 279: *Crowder* v. *Clowes*, 2 Ves. Jun. 442: *Cooper* v. *Day*, 3 Mer. 154: *Byne* v. *Currey*, 2 Cro. & Mee. 603: *The Earl of Shaftesbury* v. *the Duke of Marlborough*, 7 Sim. 237. The legacy duty given by the codicil, must, however, be a mere substitution, not an independent and substantive bequest, *Chatteris* v. *Young*, 6 Madd. 30; 2 Russ 183: *Burrows* v. *Cottrell*, 3 Sim. 375.

— in the case of substituted legacies.

It is said, that if to a legacy given by will, a further legacy be added by codicil, the further legacy will have the same qualities as the original, 6 Madd. 31; but this may be doubted.

—of additional legacies.

The duty on legacies given free of duty, is ordinarily to be paid out of the general personal estate, but if a legacy be given out of a specific fund, with a general direction that all legacies shall be paid free of duty, the duty must be paid out of the specific fund. *Noel* v. *Lord Henley*, 7 Price, 241; S. C. Dom. Proc. 12 Price, 213.

Out of what fund the duty is to be paid.

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whatsoever; AND I DIRECT that the said annuities of £—— and £—— shall be paid by equal half-yearly payments, and that the first half-yearly payments thereof respectively shall be made at the expiration of six calendar months next after my decease, if my said wife and niece respectively shall be then living: AND I ALSO BEQUEATH unto my said niece ——, and her assigns during her life, a further annuity or yearly sum of £——, clear of legacy duty, and all other deductions whatsoever, to be paid by equal half-yearly payments, and the first half-yearly payment thereof to be made at the expiration of six calendar months next after the decease of the survivor of myself and my said wife, if my said niece shall then be living: PROVIDED ALWAYS, and I declare my will to be, that if my said niece shall elect to take the sum of £——, in lieu of the said annuity or yearly sum of £—— hereinbefore provided for her, and shall declare such her election by some writing under her hand, within six calendar months next after my decease, then and in such case the annuity or yearly sum of £—— shall not become payable, and in lieu thereof I give and bequeath to my said niece the sum of £——, to be paid to her within six calendar months after my decease, clear of legacy duty, and all other deductions whatsoever, but without interest in the mean time; I GIVE and bequeath unto each of the children of my sisters —— and —— the sum of ——, to be paid to them respectively within six calendar months next after the decease of my said wife, clear of all deductions, except legacy duty, but without interest in the mean time; AND WHEREAS my brother, M. B., of &c., is indebted to me in several sums of money, amounting, in the whole, to the sum of £——, NOW I HEREBY forgive my said brother all interest which shall be due for the said sum of £——, or any part thereof, at the time of my decease; AND I HEREBY BEQUEATH the said sum of £——, or such part thereof as shall remain unpaid at the time of my decease, and all securities for the same, unto my friends, E. F., of &c., G. H., of &c., and I. K., of &c., their executors, administrators, and assigns, upon trust, that the said E. F., G. H., and I. K., and the sur-

Direction as to time of payment of annuities.

Gift of a further annuity to the niece after decease of wife.

Proviso that the annuitant may elect to take a gross sum instead of the first annuity.

Gift of legacies to the children of testator's sister.

Recital that testator's brother is indebted to him.

Forgiveness of interest on the said debt.

Gift of the principal to trustees upon trust to permit the brother to retain the same during his life, without paying interest.

vivors and survivor of them, and the executors and administrators of such survivor, do and shall permit my said brother, M. B., to retain the same sum of ——, or such part thereof as shall remain unpaid at my decease, for his own use during his life, without calling upon him for any interest in respect of the same; AND immediately from and after the decease of my said brother, do and shall call in and compel payment of the said sum of £——, or such part thereof as shall remain unpaid at my decease, and do and shall lay out or invest the same in their or his names or name in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales, but not in Ireland (*b*), with power, from time to time, to alter, vary, or transpose the said stocks funds, or securities, into or for other stocks, funds, or securities of the same, or a like nature, at their or his discretion (*c*); AND DO AND SHALL stand possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof; IN TRUST for all and every, or such one or more exclusively of the others or other of the children or child of the said M. B., at such age, day, or time, or respective ages, days, or times, and if more than one in such shares and proportions, and with such annual sums of money, or limitations over, for the benefit of the said children, or some or one of them, and with such provisions for the maintenance and education, or the preferment or advancement in the world of any such child or children, and upon such conditions, and with such restrictions, and in such manner as the said M. B. shall, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be sealed and delivered by him in the presence of and to be attested by two or more credible witnesses, or by his last will and testament, or any codicil or codicils thereto from time to time, or at any time direct or appoint;

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And after his death to call in the same and invest on securities;

—to be held in trust for the brother's children as he shall appoint.

(*b*) See ante, vol. 4, p. 312, n (*e*). (*c*) See supra, page 9, n. (*k*).

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—And in default of appointment,

—In trust for the brother's unmarried daughters attaining twenty-one or marrying.

If no such daughter, In trust for all the brother's children equally.

If no child, to form part of testator's general residue.

Hotchpot clause as to the brother's children.

Recital that a brother now deceased was indebted to the testator, and that lands had been conveyed to testator in part satisfaction of the debt.

AND IN DEFAULT of any such direction or appointment, or so far as no such direction or appointment shall extend, IN TRUST for all and every the daughters and daughter of the said M. B., who shall not be, or have been, married at the time of his decease, and shall attain the age of twenty-one years, or marry under that age, to be divided between or among such daughters, if more than one, in equal shares, and if there shall be but one such daughter, the whole to be in trust for that one daughter; AND if there shall be no such daughter, IN TRUST for all and every other the children and child of the said M. B., who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, to be divided between or among such children, if more than one, in equal shares; and if there shall be but one such child, the whole to be in trust for that one child (*d*); AND if there shall be no such child, then IN TRUST, to allow the same to sink into and become part of the general residue of my personal estate: PROVIDED ALWAYS, that in default of any direction or appointment by the said M. B. to the contrary, if there shall be two or more children of the said M. B. who, under the trusts aforesaid, shall become entitled to shares of or in the said trust monies, stocks, funds, and securities, no such child taking any part of the said trust, monies, stocks, funds, or securities, by virtue of any direction or appointment to be made by the said M. B. in pursuance of the power in that behalf hereinbefore contained, shall have or be entitled to any further or other share of or in that part of the same trust monies, stocks, funds, and securities, of which no such direction or appointment shall have been made as aforesaid, without bringing her or his appointed share into hotchpot, and accounting for the same accordingly (*e*): AND WHEREAS my late brother N. B. was indebted to me, at the time of his decease, in several sums of money, amounting in the whole to the sum of £——, and, since his decease, certain houses and lands situate at ——, have been conveyed to me in fee-simple, in satisfaction of the sum of £——, part of

(*d*) See ante, vol. 4, p. 318, n. (*i*). (*e*) See ante, vol. 4, p. 319, n. (k).

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the same debt, and the sum of £——, residue thereof still remains due to me from his estate: NOW I DO HEREBY give, devise, and bequeath the said houses and lands at —— aforesaid, with their appurtenances, and all my estate and interest therein, and also the said sum of £—— now remaining due to me as aforesaid, or such part of the same as shall remain unpaid at the time of my decease, and all interest which shall be due for the same, and all securities for the same respectively unto and to the use of the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns respectively, according to the nature and quality thereof respectively, and upon and for the trusts, intents, and purposes hereinafter declared of or concerning the same respectively (that is to say): AS TO the said houses and lands at ——, with their appurtenances, Upon trust that they the said [trustees], and the survivors and survivor of them, and the heirs of such survivor do and shall, during the life of my niece Q. B., daughter of my said deceased brother N. B., keep the said houses in sufficient repair, and adequately insured against loss by fire, and let the said houses and lands, or any part or parts thereof, unto any person or persons, for such term or terms of years, at such rent or rents, under such conditions and in such manner as the said trustees or trustee for the time being shall think fit: AND DO AND SHALL, by and out of the rents, issues, and profits of the said houses and lands, pay the expenses of such repairs and insurance as aforesaid, and all taxes, rates, and other outgoings in respect of the same premises, and pay the surplus or residue of the same rents, issues, and profits, from time to time, to my said niece Q. B. and her assigns during her life; And do and shall, as soon as conveniently may be after the decease of the said Q. B. [*trust for sale, supra, page* 6]: AND DO AND SHALL stand possessed of and interested in the monies to arise from such sale or sales, and of the rents, issues, and profits of the same premises, from and after the decease of the said Q. B. until the sale of the said premises, upon and for the trusts, intents, and purposes hereinafter declared of or concerning the same: AND AS TO the said sum of £——,

Devise of the lands and of the residue of the debt to trustees.

As to the lands, upon trust during life of testator's niece to let and manage the same;

and pay outgoings.

and the net rents to the niece;

—and after the death of the niece, Upon trust to sell;

—and to hold the purchase-money upon the trusts subsequently declared;

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or such part thereof as shall remain due and owing to me at the time of my decease, and the interest which shall be then due for the same; upon trust, that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, do and shall call in and compel payment thereof, and invest the same in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, but not in Ireland (*f*), with power from time to time to alter, vary, and transpose the said stocks, funds, and securities into or for others of the same or a like nature, at their or his discretion (*g*); AND DO AND SHALL pay the interest, dividends, and annual produce of the same trust monies, and the stocks, funds, and securities in or upon which the same shall be invested unto or permit the same to be received by the said Q. B. and her assigns during her life; AND from and immediately after the decease of the said Q. B., do and shall allow the same trust monies, stocks, funds, and securities, to fall into and become part of the general residue of my personal estate [*General devise of real and personal estate in trust for sale and conversion into money, supra, pages* 6, 7.]: AND I HEREBY DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall stand possessed of and interested in the monies to arise from the sale or sales of all and every the said hereditaments and real estate hereinbefore devised in trust for sale, and from the calling in, sale, disposition, and conversion into money of all such and so many, and such part and parts as are hereinbefore directed to be called in, sold, disposed of, and converted into money, of the said monies, securities for money, goods, chattels, rights, credits, and other personal estate hereinbefore bequeathed, in trust for sale and conversion into money (subject nevertheless

—And as to the debt, Upon trust to call in,

—and invest the same;

—and pay the income to the niece for life;

—and at her death to form part of the general residue of personal estate.

—Declaration of trust of the monies produced by the sale and conversion into money of real and personal estate.

(*f*) See ante, vol. 4, p. 312, n. (*e*).

(*g*) See supra, p. 9, n. (*k*).

and without prejudice to the trust hereinbefore contained, as to parts of the said real and personal estate for my said niece), and of and in the said ready money of or to which I shall be possessed or entitled at the time of my death, UPON TRUST, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall, by and out of the same, pay and discharge my funeral and testamentary expenses and debts, and the costs and expenses to be incurred in or about the sale or sales, calling in, disposition, or conversion into money aforesaid or otherwise in or about the execution of the trusts aforesaid, or in relation thereunto, and the legacies bequeathed by this my will, or any codicil hereto, except the legacies hereinbefore made, or which by any such codicil shall be made payable after the death of my said wife (*h*): AND in the next place do and shall, with and out of the same trust monies, purchase, in their or his names or name, £3 per cent. Bank Annuities, to such an amount as shall be sufficient, by means of the dividends thereof, TO answer and satisfy the several annuities hereinbefore bequeathed, or such of them as shall then be subsisting and payable; AND to provide for the payment, during the life of my said wife, of the rent, rates, and taxes, and other annual outgoings (not exceeding in the whole the annual sum of £——), which may become payable for or in respect of any house and premises which my said wife shall from time to time choose as a residence; AND I hereby direct that the dividends of the £—— per cent. Bank Annuities so to be purchased as last aforesaid, shall from time to time be paid and applied by the said trustees or trustee for the time being, for the same several purposes accordingly: PROVIDED ALWAYS, and I hereby direct, that until such purchase or investment as last hereinbefore directed shall be made, the several annuities and other payments intended to be provided for by such purchase or investment shall be paid and satisfied from time to time out of the income of any part of my said residuary

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To pay debts, funeral and testamentary expenses, and immediate legacies;

—and purchase Bank Annuities to satisfy annuities;

—and the rent and outgoings of a house for the testator's wife for her life.

Proviso that till investment the annuities shall be paid out of original income or out of the principal monies;

(*h*) See supra, p. 8, n. (*h*).

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estate which shall be producing income, and in default thereof, by and out of the principal monies to arise or come to the hands of the said trustees or trustee for the time being, by the ways or means hereinbefore mentioned, or any of them (*i*); AND I FURTHER DIRECT, that, from time to time, as and when any of the several annuities or other payments intended to be provided for by the purchase or investment aforesaid shall cease to be payable, a proportional part of the said trust fund shall sink into and form part of the general residue of the aforesaid trust fund out of which such investment shall have been so made as aforesaid: AND I DECLARE my will to be, that, subject as aforesaid, the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor do, and shall by and out of the aforesaid trust monies pay the sum of £——, with interest for the same, after the rate of £—— per cent. per annum, to be computed from my decease (*k*), unto my eldest son J. B., in case and when

—and that on annuities ceasing, a proportional part of the fund set apart to meet them shall fall into the residue.

Legacies with interest from testator's death, to be paid to two sons on attaining twenty-one.

Annuities; payment of.

(*i*) When annuities are given, a provision to this effect is desirable, as it is obviously very possible, in the case of many estates, that the first payments of the annuities may become due before the investments can have been made to meet them. An annuity, for the commencement of which no time is specified, commences from the testator's death, and the first payment is to be made at the end of a year. 7 Ves. 96, 97; 9 Ves. 553; Williams on Law of Executors, Part II. book iii. ch. 4. sect. 4. If an annuity be directed to commence within the year, the first payment or payments will be due at the time specified, but the executor cannot be compelled to pay them till the end of the year. *Storer* v. *Prestage*, 3 Madd. 167: *Houghton* v. *Franklin*, 1 Sim. & Stu. 390; Williams' Law of Executors, ubi supra; see too supra, page 3, note (*c*). Where a testator gave an annuity to a person for life, payable quarterly, the first payment to be made within eighteen months after the death of the testator, the annuity does not commence till fifteen months from his death. *Irvin* v. *Ironmonger*, 12 Russ. & My. 531. And in the same case it was held, that a life annuity, the first payment whereof was directed to be made within one month from the testator's death, commenced from the death of the testator, but that, though the first year's payment was to be made at the appointed time, that for the second year did not become due till the end of the year.

Interest on legacies.

(*k*) On legacies for the payment of which no time is fixed, interest

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he shall attain the age of twenty-one years, and the like sum of £——, with like interest for the same, to my son A. B., in case and when he shall attain the age of twenty-one years, AND the like sum of £——, with like interest for the same, to my daughter M. B., in case and when she shall attain the age of twenty-one years, or marry under that age, AND the like sum of £——, with like interest for the same, to trustees, their executors, administrators, or assigns, in satisfaction of a covenant which I entered into with them, in and by an indenture of settlement bearing date the —— day of ——, and made, or expressed to be made, between [*parties*] (being the settlement executed previously to and in consideration of the marriage then intended, and shortly after had and solemnized between my said daughter —— and the said ——; AND that each of the said portions of £—— hereinbefore provided for my said children, J. B., W. B., and M. B., respectively as aforesaid (if the same respectively shall not become absolutely vested upon my decease) shall be laid out or invested in the names

Legacy to an unmarried daughter on attaining twenty-one or marrying.

Legacy to the trustees of a married daughter's settlement.

Proviso that the legacies not vested at the testator's death be laid out in the names of the trustees, and the income at their discre-

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runs from the end of the year from the testator's death (see supra, p. 3, note, (*c*)); and on those for the payment of which a time is fixed, interest runs from the appointed period. Williams' Law of Executors, Part III. Book ii. chap. 4. sect. 6; *Thomas* v. *The Attorney General*, 2 You. & Coll. 535. There is an exception to the latter rule, in the case of legacies given by the testator to his children, or to infants to whom he stands in loco parentis, and for whose maintenance no other provision is made; Williams, ubi supra: *Boddy* v. *Dawes*, 1 Keen, 362. If a legacy be postponed to a future period, and be directed to be paid with interest, the legacy will bear interest only from the end of the year after the testator's death, *Knight* v. *Knight*, 2 Sim. & Stu. 492: *Pickwick* v. *Gibbes*, 1 Beav. 271. Where there was a gift to a woman to be paid at twenty-five, and to be put in settlement if she married before that age, it was held, that on her attaining twenty-one unmarried, she was entitled to the accumulated and future interest, *Grant* v. *Grant*, 3 You. & Coll. 171. As to the claim to interest of the personal representative of a person to whom a legacy is given, contingent on his attaining twenty-one, see Williams, Law of Executors, ubi supra; *Freeman* v. *Simpson*, 6 Sim. 75.

—rate of.

The rate of interest allowed on legacies is four per cent, except where the executor has misapplied the funds or made higher interest; Williams' Law of Executors, ubi supra. Compound interest is not allowed, except in special cases, Ib.

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tion applied,

or name of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales, but not in Ireland (*l*), with power for them or him from time to time to alter, vary, and transpose the same into or for other stocks, funds, or securities of the same or a like nature (*m*), and that the interest, dividends, and annual produce of each such portion of the stocks, funds, or securities, in or upon which the same shall be invested, or a competent part of such interest, dividends, and annual produce, at the discretion of the said trustees or trustee for the time being, shall be applied by

—for maintenance of the legatees;

them or him for the maintenance and education of the child for the time being entitled thereunto in expectancy, and that the surplus (if any) of such interest, dividends, or annual produce shall, during the suspense of the absolute vesting of such portion, be accumulated by the said trustees

—or accumulated for their benefit.

or trustee for the time being in the way of compound interest, by the investment of the same, and all the resulting income and produce thereof, in or upon any such stocks, funds, or securities as are hereinbefore mentioned, in the names or name of the said trustees or trustee for the time being, and with such power of altering or varying securities as aforesaid, for the benefit of the child for whom the same portion is hereinbefore provided, with power for the said trustees or trustee for the time being to resort to the accumulation of any preceding year or years, and to apply the same as to him or them shall seem meet for the maintenance and education of the child for the time being entitled to the same in expectancy as aforesaid, in like manner as such accumulations might have been applied under the trust hereinbefore contained, in case the same had been interest, dividends, or annual produce arising from the original trust fund, in the year in which the same shall be applied for

(*l*) See ante, vol. 4, p. 312, n. (*e*). (*m*) See supra, p. 9, n. (*k*).

maintenance and education (*n*): PROVIDED ALWAYS, and I declare my will to be, that if any of them, the said J. B., W. B., and M. B., shall die before the vesting of the portions hereinbefore provided for them respectively as aforesaid, then and in every or any such case the portion hereinbefore provided for him or her so dying, and the accumulations (if any) of the interest, dividends, and annual produce of the same, and the stocks, funds, or securities in or upon which the same respectively shall have been laid out or invested, shall sink into and become part of the general residuary fund, the trusts whereof are hereinafter declared (*o*): PROVIDED ALWAYS, and I declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, at any time or times during the respective minorities of my said sons, J. B. and W. B., to pay or apply any part or parts of their said respective portions for or towards their respective advancement or preferment in the world, or benefit, not exceeding for either of them one equal moiety or half part of his then presumptive or expectant portion (*p*): AND I declare my will to be, that the said E. F., G. H., and I. K., and the survivors or survivor of them, and the heirs, executors, or administrators of such survivor do and shall stand possessed of and interested in the surplus or residue which shall remain of the aforesaid trust monies, after answering and satisfying the several trusts and purposes hereinbefore declared of the same (subject to the payment thereout of the several legacies hereinbefore bequeathed and directed to be paid after the death of my said wife), upon the trusts following (that is to say), IF both my said sons, J. B. and W. B. shall attain the age of twenty-one years, then as to two equal

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Legacies not becoming vested to sink into the residue.

Advancement clause as to the legacies.

Trusts of residue.

In trust for two sons if they attain twenty-one;

(*n*) See ante, vol. 4, p. 321, n. (*m*).

(*o*) The direction in the text is inserted to prevent any doubt arising on the subject, but as a general rule, all legacies which lapse by any means, fall into the residue, Williams's Law of Executors, Part III. book iii. chap. 5. sect. 1.

(*p*) See ante, vol. 4, p. 320, n. (*l*).

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third shares thereof, IN TRUST for my said son J.B., his executors, administrators, and assigns, and as to the remaining one equal third share thereof, In trust for my said son W. B., his executors, administrators, and assigns; BUT IF one only of my said sons, J. B. and W. B., shall attain the age of twenty-one years, then, IN TRUST for such one son who shall attain the age of twenty-one years, his executors, administrators, and assigns; AND IF neither of my said sons shall attain the age of twenty-one years, and my said daughter, M. B., shall attain the age of twenty-one years, or marry under that age, then, IN TRUST for my said daughter, M. B. and [*the married daughter*] their respective executors, administrators, and assigns, in equal shares, as tenants in common; AND if neither of my said sons, J. B. and W. B., shall attain the age of twenty-one years, and my said daughter, W. B., shall not attain the age of twenty-one years, nor marry under that age, then, in trust for my said daughter [*the married daughter*], her executors, administrators, and assigns; AND I DECLARE my will to be, that in case the trust monies, the trusts whereof are lastly hereinbefore declared, or any part or share thereof, shall not become absolutely vested upon my decease, then and in such case the whole or such part (as the case may be) as shall not become so vested of the same trust monies shall be laid out or invested in the names or name of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales, but not in Ireland, with power for them or him from time to time to alter, vary, or transpose the same, into or for other stocks, funds, or securities of the same or a like nature, and that during such suspense of absolute vesting as last aforesaid, the interest, dividends, and annual produce of the said last-mentioned trust monies, or of the invested part or share thereof, for the time being, shall be accumulated by the said trustees or trustee for the time being in the way of compound inter-

—as to two-thirds for one; and one-third for the other; but if one die under twenty-one, then the whole for the survivor if he attain twenty one.

If both die under twenty-one, then in trust for the two daughters if the unmarried one attain twenty-one or marry; —if not, the whole for the married daughter absolutely.

Accumulation clause.

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est, by investing the same, and all the resulting income and produce thereof from time to time in or upon any such stocks, funds, and securities as are hereinbefore mentioned, for the benefit of the persons or person who, under the trusts lastly hereinbefore contained, shall become entitled to the principal fund, or the share of the principal fund from which the same respectively shall have proceeded (*r*); AND I DECLARE my will to be, that until the said hereditaments and premises lastly hereinbefore devised shall be sold under the trust in that behalf hereinbefore contained, it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs of such survivor from time to time to let the same hereditaments and premises, or any part or parts thereof, unto any person or persons, for such term or terms of years, at such rent or rents, under such conditions and in such manner, in all respects, as they or he shall think fit, and that in the meantime &c. [*rents and profits of the residuary real estate, until a sale, to be applied as income of purchase-money, supra, page* 12.]: PROVIDED always, and I declare my will to be, that if, at the time of my decease, any part of my personal estate shall be invested in or upon any foreign stocks, funds, or securities, or in or upon any stocks, funds, or securities other than those in or upon which the same is hereinbefore directed to be laid out or invested, then and in such case, notwithstanding any of the trusts or directions hereinbefore contained, it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, during the life of my said wife, and with her consent in writing, to allow the same to remain in or upon such stocks, funds, or securities, without their or his being liable or accountable at law or in equity for any loss which may happen or be occasioned to my estate by reason thereof (*s*); AND I HEREBY DECLARE my will to be, that the provision hereby made for my said wife shall be accepted by her in bar

Power of leasing for any term of years.

Rents and profits till a sale, to go as income of purchase-money;

—Trustees, with consent of wife, may permit funds to remain in their actual state of investment at the testator's death.

Dower clause.

(*r*) See ante, vol. 4, p. 321, n. (*m*). The trust to accumulate is here made imperative, the testator considering that the maintenance of the several legatees is otherwise sufficiently provided for.

(*s*) As to the necessity of this power, see supra, p. 9, n. (*k*).

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third shares thereof, IN TRUST for my said son J.B., his executors, administrators, and assigns, and as to the remaining one equal third share thereof, In trust for my said son W. B., his executors, administrators, and assigns; BUT IF one only of my said sons, J. B. and W. B., shall attain the age of twenty-one years, then, IN TRUST for such one son who shall attain the age of twenty-one years, his executors, administrators, and assigns; AND IF neither of my said sons shall attain the age of twenty-one years, and my said daughter, M. B., shall attain the age of twenty-one years, or marry under that age, then, IN TRUST for my said daughter, M. B. and [*the married daughter*] their respective executors, administrators, and assigns, in equal shares, as tenants in common; AND if neither of my said sons, J. B. and W. B., shall attain the age of twenty-one years, and my said daughter, W. B., shall not attain the age of twenty-one years, nor marry under that age, then, in trust for my said daughter [*the married daughter*], her executors, administrators, and assigns; AND I DECLARE my will to be, that in case the trust monies, the trusts whereof are lastly hereinbefore declared, or any part or share thereof, shall not become absolutely vested upon my decease, then and in such case the whole or such part (as the case may be) as shall not become so vested of the same trust monies shall be laid out or invested in the names or name of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales, but not in Ireland, with power for them or him from time to time to alter, vary, or transpose the same, into or for other stocks, funds, or securities of the same or a like nature, and that during such suspense of absolute vesting as last aforesaid, the interest, dividends, and annual produce of the said last-mentioned trust monies, or of the invested part or share thereof, for the time being, shall be accumulated by the said trustees or trustee for the time being in the way of compound inter-

—as to two-thirds for one; and one-third for the other; but if one die under twenty-one, then the whole for the survivor if he attain twenty one.

If both die under twenty-one, then in trust for the two daughters if the unmarried one attain twenty-one or marry;

—if not, the whole for the married daughter absolutely.

Accumulation clause.

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est, by investing the same, and all the resulting income and produce thereof from time to time in or upon any such stocks, funds, and securities as are hereinbefore mentioned, for the benefit of the persons or person who, under the trusts lastly hereinbefore contained, shall become entitled to the principal fund, or the share of the principal fund from which the same respectively shall have proceeded (*r*); AND I DECLARE my will to be, that until the said hereditaments and premises lastly hereinbefore devised shall be sold under the trust in that behalf hereinbefore contained, it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs of such survivor from time to time to let the same hereditaments and premises, or any part or parts thereof, unto any person or persons, for such term or terms of years, at such rent or rents, under such conditions and in such manner, in all respects, as they or he shall think fit, and that in the meantime &c. [*rents and profits of the residuary real estate, until a sale, to be applied as income of purchase-money, supra, page* 12.]: PROVIDED always, and I declare my will to be, that if, at the time of my decease, any part of my personal estate shall be invested in or upon any foreign stocks, funds, or securities, or in or upon any stocks, funds, or securities other than those in or upon which the same is hereinbefore directed to be laid out or invested, then and in such case, notwithstanding any of the trusts or directions hereinbefore contained, it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, during the life of my said wife, and with her consent in writing, to allow the same to remain in or upon such stocks, funds, or securities, without their or his being liable or accountable at law or in equity for any loss which may happen or be occasioned to my estate by reason thereof (*s*); AND I HEREBY DECLARE my will to be, that the provision hereby made for my said wife shall be accepted by her in bar

Power of leasing for any term of years.

Rents and profits till a sale, to go as income of purchase-money;

—Trustees, with consent of wife, may permit funds to remain in their actual state of investment at the testator's death.

Dower clause.

(*r*) See ante, vol. 4, p. 321, n. (*m*). The trust to accumulate is here made imperative, the testator considering that the maintenance of the several legatees is otherwise sufficiently provided for.

(*s*) As to the necessity of this power, see supra, p. 9, n. (*k*).

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and full satisfaction of all dower or thirds and freebench to which, at common law or otherwise, she may or otherwise might become entitled in or out of all or any lands or hereditaments of which I have been, or am or shall be seized, for any estate to which dower or freebench is incident (*t*). [*Devise of trust and mortgage estates, supra, page* 13.]

Devise of trust and mortgage estates;

—appointment of wife to be guardian of children during her widowhood;

—and in case of her death or marriage, the trustees to be guardians.

AND I DO HEREBY nominate and appoint my said wife to be, during her widowhood, the guardian of my infant children during their respective minorities; and in case she shall die or marry again during the minority of any of them, then I nominate and appoint the said E. F., G. H., and I. K. to be thenceforth the guardians of my said infant children during the residue then to come of their respective minorities (*u*);

Appointment of executors.

Legacies to executors.

AND I DO HEREBY nominate and appoint the said E. F., G. H., and I. K. executors of this my last will and testament; AND I GIVE and bequeath unto them, or such of them as shall act in the execution of this my will, the sum of £—— a piece (*v*);

Usual clauses.

AND I DO HEREBY authorize and empower &c. [*Power for the executors to arrange, compromise, and compound, supra, p.* 14. *Declaration that the receipts of the trustees and trustee for the time being shall be discharges, supra, p.* 15.]

Power to appoint new trustees.

PROVIDED ALWAYS, and I do hereby declare my will to be, that if the said trustees hereinbefore named, or any (*x*) of them, or any trustee or trustees to be appointed as hereinafter is mentioned, shall

(*t*) See ante, vol. 4, p. 403, n. (*n*). See Williams' Law of Executors, Part III. book iii. chap. 4, sect. 9. *Dawson* v. *Bell*, 1 Keen, 761.

(*u*) See supra, p. 14, n. (*r*).

(*v*) Where legacies are given to persons in the character of executors, they are deemed to be given on condition that the legatees clothe themselves with that character, by taking probate and acting as executors. Williams' Law of Executors, Part III. book iii. chap. 2, sect. 6. But this doctrine of course gives rise to the question, under what circumstances legacies are to be deemed to have been given to persons in the character of executors, and therefore when legacies are intended to be so given, it is proper to state that intention distinctly on the face of the will. In a recent case, where a testator gave one of his executors an *annuity* for his trouble, till a final settlement should be made of the testator's affairs, it was held, that this annuity did not necessarily cease on the institution of a suit for the administration of the testator's estate; *Baker* v. *Martin*, 8 Sim. 25.

(*x*) See supra, p. 16, n. (*u*).

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die or be absent from this kingdom more than twelve calendar months at any one time; or be desirous of being discharged of and from, or refuse or decline, or become incapable to act in the aforesaid trusts before the same shall be fully executed, then and so often as the same shall happen it shall be lawful for the surviving or continuing trustees or trustee for the time being (and for this purpose any trustee or trustees retiring from or declining to act in the aforesaid trusts shall, if willing to act in the exercise of this present power, be considered a continuing trustee or continuing trustees (*y*)), or for the executors or administrators of the last surviving or continuing trustee for the time being from time to time to appoint any other person to be a trustee or trustees in the stead of the trustee or trustees so dying or being absent from this kingdom, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid; and that upon every such appointment the said trust estates, monies, and premises shall be assigned, transferred, or conveyed in such manner, and so that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees, or solely, as the case may require, and every such new trustee shall (either before or after the said trust estates, monies, and premises shall have become vested as aforesaid) have the same powers as if he or they had been originally named a trustee or trustees in this my will: PROVIDED ALSO, and I do hereby further declare my will to be, that the trustees or trustee for the time being of this my will shall not be answerable the one for the other of them, and by no means for involuntary losses; and also that it shall be lawful for the said trustees and trustee for the time being to reimburse themselves or himself out of the monies which shall come to their or his hands by virtue of the trusts aforesaid, all the costs and expenses to be incurred in or about the execution of the aforesaid trusts (*z*). IN WITNESS &c.

Clauses for the indemnity of trustees and the payment of their expenses.

(*y*) See supra, p. 16, n. (*v*).

(*z*) See the longer forms for the appointment of new trustees, and the indemnity of the trustees and the payment of their expenses, supra,

III.

GIFT OF LEGACIES IN BAR OF CLAIMS, AND DISPOSITION OF BUSINESS ON TRUSTS.

WILL *of* REAL *and* PERSONAL ESTATE. GIFT *of* LEGACIES *charged on real and personal Estate, some being for the* SEPARATE USE *of married Women.* DEVISE *of* LANDS *to* TENANTS IN COMMON *in fee.* LEGACIES *and Devises to be in* BAR *and satisfaction of certain claims of the Legatees.* BEQUEST *of the Testator's* BUSINESS, CAPITAL, STOCK, BOOK DEBTS, MONEY, *and* FUNDS *in equal third Shares (subject to the Payment as to each Share of one-third of the Funeral and Testamentary Expenses, Debts, and Legacies of the Testator), to Three Legatees, one being a Female.* DIRECTION *that the* BUSINESS *shall be* CARRIED *on by the Male Legatees, and special Directions as to the Investment and Accumulation of the Third Share given to the Female of the Capital and Profits, if she refuse to accept the same, with ultimate disposition thereof*(*a*). DIRECTION *that one*

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pp. 16—18, and the notes thereto. The short forms in the text may be used without hesitation in all wills, except those which contain settlements of real estate, or trusts or directions involving the necessity of special indemnities.

Periods during which the accumulation of income is allowable by law.

Thellusson's Act.

(*a*) The income of property might formerly be accumulated during the same period the vesting of the property might be suspended, but if the period fixed for an accumulation exceeded these limits, the trust was wholly void, *Lade* v. *Holford*, Ambl. 479, S. C. 3 Burr. 1416: 1 W. Blackst. 428; *Lord Southampton* v. *Marquis of Hertford*, 2 Ves. & Bea. 54; *Marshall* v. *Holloway*, 2 Swans. 482. But by the stat. 39 & 40 Geo. 3, c. 98, it is declared that no income "shall be wholly or partially accumulated for any longer term than the life or lives of any grantor or grantors, settlor or settlors, OR the term of twenty-one years from the death of the grantor, settlor, devisor, or testator, OR during the minority or respective minorities of any person or persons who shall be living, or in ventre sa mere, at the time of the death of such grantor, devisor, or tes-

of the Male Legatees shall give the other a BOND *to* SECURE *his* SHARE *of the* BUSINESS. GIFT *of* RESIDUE *of* REAL *and* PERSONAL

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tator: OR during the minority or respective minorities only of any person or persons, who, under the uses or trusts of the deed, surrender, will, or other assurance, directing such accumulations, would, for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated; and in every case where any such accumulation shall be directed, otherwise than as aforesaid, such direction shall be null and void, and the rents, issues and profits and produce of such property so directed to be accumulated, shall so long as the same shall be directed to be accumulated, contrary to the provisions of the act, go and be received by such person or persons as would have been entitled thereto, if such accumulation had not been directed." The act subsequently declares, that nothing therein contained shall extend to any provision for payment of debts, or to any provision for raising portions for children, or to any direction touching the produce of timber or wood.

Accumulation in part only contrary to the statute, bad only for the excess.

Destination of excess.

Original fund accumulations.

It has been decided that if an accumulation be directed, which is in part within the limits allowed by the act, the direction is good pro tanto, and bad only as to the excess, *Griffiths* v. *Vere*, 9 Ves. 127; *Longdon* v. *Simson*, 12 Ves. 295; *Shaw* v. *Rhodes*, 1 My. & Cra. 135. If the legal period of accumulation expire before the fund, the income of which is directed to be accumulated, has become vested, the subsequent income (as well of the original fund as of the valid accumulations), till the vesting falls into the residue, *Haley* v. *Bannister*, 4 Madd. 275; *O'Neill* v. *Lucas*, 2 Keen, 313, and not as income, but as part of the capital of the residue, *Crawley* v. *Crawley*, 7 Sim. 427. But where an accumulation was directed of the income of the residue of personalty, and the legal period of accumulation expired before the vesting of the residue, it was held, that the next of kin were entitled to the income of the residue and prior accumulations till the capital should become vested, *M'Donald* v. *Boyce*, 2 Keen, 276. When the capital itself of a fund or residue is vested, subject only to be divested in the happening of certain events, the income beyond the period of accumulation will be payable to the persons for the time being presumptively entitled, *Scott* v. *the Earl of Shaftesbury*, 1 Beav. 154. In the case of real estate, the rents and profits beyond the period of accumulation, if not payable to a residuary devisee, will go to the heir at law, 9 Ves. 133.

Accumulation for minority of unborn child, bad.

It has been held that the statute prohibits an accumulation directed by will during the minority of an unborn child. *Haley* v. *Bannister*, 4 Madd. 275.

See further as to trusts for accumulation, *Shaw* v. *Rhodes*, 1 My. & Cra. 135; 1 Pow. on Devises, by Jarm. 414—419; Id. 706.

Estate. PROVISO *as to the* PRIMARY FUND *for the Payment of Funeral and Testamentary Expenses, Debts, and Legacies.* USUAL CLAUSES.

GIFT OF LEGACIES IN BAR OF CLAIMS, AND DISPOSITION OF BUSINESS ON TRUSTS.

I, A. B., of &c., do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and declare this to be my last will and testament: AND WHEREAS I have made provision for the advancement in life of my sons D. B., E. B., and F. B., and under or by virtue of an indenture bearing date the —— day of ——, and made or expressed to be made between [*parties*], my daughters G. B. and H. B. will on my decease become entitled for an estate of inheritance in fee-simple as tenants in common to certain hereditaments situate in ——. NOW I HEREBY GIVE and bequeath unto my daughter I. C., the wife of A. C., &c., the sum of £——, and unto my daughter K. D., the wife of B. D., of &c., the sum of £——, and unto my said daughter G. B., the sum of £——, and unto my said daughter H. B., the sum of £——: AND I DO HEREBY charge and make chargeable all my real and personal estate, (except as hereinafter mentioned), with the payment of the said several legacies of £——, £——, £——, and £——, respectively; AND I DIRECT that the same respectively shall be paid to my said daughters respectively, or their respective executors, administrators, or assigns, within —— years next after my decease, with interest for the same respectively in the mean time, after the rate of £—— per cent. per annum, to be computed from my decease, and to be payable half-yearly (*b*); AND I DO HEREBY further direct, that the legacy or legacies hereinbefore respectively provided for any one or more of my said four daughters who may be under coverture at my decease, and the interest thereof respectively shall be paid and payable to her or them respectively for her or their separate use, independently and exclusively of her or their husband or respective husbands, and without being in anywise subject to the debts, control, or interference of such husband or respect-

Notice of provision already made for some of testator's children.

Gift of Legacies to testator's daughters; those to married daughters for their separate use, and charge thereof on the testator's real and personal estate.

(*b*) As to the interest on legacies, see supra, p. 28, n. (*k*).

ive husbands (*c*): AND WHEREAS my late father in law ——, late of &c., deceased, did, in and by his last will and testament, bearing date, &c., direct a sum of £—— to be invested in government or real securities, and to be paid and divided to and among such of the children of his daughter C., late my wife, as should be living at her decease in equal shares, if more than one; they, she, or he, to take vested interests therein, as and when they should severally attain the age of twenty-one years: NOW I DO HEREBY DECLARE and direct, that the said several legacies hereinbefore given to my said four daughters respectively, are so given to them respectively upon this express condition, that they respectively shall not make any claim whatsoever either against my estate or effects, or against the estate and effects of the said ——, in respect of any share or shares to which they are or may respectively become entitled, of and in the said sum of £——, as children of my said wife living at her decease; and that if at any time any of them my said daughters shall make or prosecute any claim or demand whatsoever in respect of the same sum of £——, or any share or shares thereof, then and in such case the legacy or legacies hereinbefore by me given to such of my said daughters as shall make or prosecute such claim or demand as aforesaid, shall sink into and become part of my residuary personal estate (*d*): AND I GIVE AND DEVISE all that the undivided equal moiety or half part to which I am entitled of and in all that &c., unto my said daughters G. B. and H. B., their heirs and assigns for ever, as tenants in common: AND I DECLARE my will to be that the same undivided equal moiety, or half part of the said last mentioned hereditaments and premises, or any part thereof, shall not be charged or chargeable with the payment of any of the legacies hereinbefore given to my said daughters G. B., H. B., I. C., and K. D., respectively, or any interest for the same respectively: AND WHEREAS I have, by a certain

GIFT OF LEGACIES IN BAR OF CLAIMS, AND DISPOSITION OF BUSINESS ON TRUSTS.

Recital that daughters are entitled to a sum of money.

Declaration that the aforesaid legacies are to be in bar of their claims.

Devise of certain lands to two daughters as tenants in common;

—to be exempt from payment of legacies.

The bequests

(*c*) See supra, p. 4, n. (*d*).

(*d*) As to the satisfaction of debts and portions by legacies, see Williams' Law of Executors, Part III. book iii. chap. 2, sect. 8.

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memorandum or agreement in writing, bearing date &c., agreed to pay to my said daughters G. B. and H. B. respectively, in the event therein specified, certain annuities during their respective lives: Now I DO HEREBY declare my will to be, that if my said daughters G. B. and H. B., or either of them, shall at any time or times after my decease, claim the said annuities or either of them, or any part thereof respectively; Then and in such case the legacy or respective legacies hereinbefore given to her or them respectively so claiming as aforesaid, and the devise or respective devises hereinbefore made to her or them respectively so claiming as aforesaid, shall become absolutely void and of no effect; and the real and personal estate hereinbefore respectively devised and bequeathed to her or them respectively who shall so claim as aforesaid, shall respectively sink into and form part of my residuary estate (*e*); I GIVE AND BEQUEATH one undivided equal third share of and in all that brewhouse, with the tun-room, yard, chaise-house, counting-house, stables, and premises situate at —— aforesaid, commonly called or known by the name of the —— brewery, and which I now hold on lease of ——, for the residue of a term of 21 years, commencing from ——, together with one undivided equal third share of and in the plant and brewing utensils which shall be on or belonging to the said premises at the time of my decease; and of and in all other my stock in trade at the time of my decease in the trade or business of a brewer now carried on by me; and of and in the good-will of the said trade or business; and of and in all the book-debts, money in hand, and at my bankers', and money invested in government or other securities of or to which I shall be possessed or entitled at law or in equity at the time of my decease, unto my son L. B., his executors, administrators, and assigns subject nevertheless to the payment thereout of one equal third part of the debts which at my decease shall be owing by me in respect of the said trade or business or otherwise howsoever; and also of one equal third part of my funeral and testamentary

and devise to such two daughters to be in satisfaction of an obligation of the testator to pay them certain annuities.

Bequest of one third of a brewery, lease, and stock to testator's son.

Subject to the payment of one third of the funeral and testamentary expenses, debts, and legacies of testator.

(*e*) See the last page, n. (*d*).

expenses; and one equal third part of the legacies bequeathed by this my will, or by any codicil or codicils hereto: I GIVE AND BEQUEATH one other equal undivided third share of and in the said brewhouse, tun-room, yard, chaise-house, counting-house, stables, and premises, plant, brewing utensils, and other stock in trade, good-will, book debts, money in hand, and at my bankers', and money invested in government or other securities, unto my nephew A. M., of &c., his executors, administrators, and assigns, (subject nevertheless &c.), [*as in the last bequest*]; and on condition of the said A. M. executing such bond to the said L. B., as is hereinafter directed: AND I GIVE and bequeath the remaining one undivided equal third share of and in the said brewhouse, tun-room, yard, chaise-house, counting-house, stables, and premises, plant and brewing utensils, and other stock in trade, good-will, book debts, money in hand, and at my bankers', and money invested in government or other securities, unto C. D., the daughter of X. D., of &c., her executors, administrators, and assigns, (subject nevertheless &c.), [*as in the bequest of the first third share*]: AND I HEREBY DECLARE my will to be, and direct that the said L. B. and A. M. do and shall, after my decease, carry on the said trade or business of a brewer, now carried on by me as aforesaid, for the equal benefit of the said L. B., A. M., and C. D., during the residue of the said term of 21 years, if all of them, the said L. B., A. M., and C. D., shall so long live; and that during such period all the capital and stock in trade which at my decease shall be in or belong to the said trade or business, including therein the said book debts, money in hand and at my bankers', and money invested in government or other securities (and which capital and stock in trade is hereinbefore bequeathed in equal third shares as aforesaid) shall continue to be employed in carrying on the said trade or business; and that the profits of the said trade or business to be carried on as aforesaid, after deducting the expenses which shall be incurred in carrying on the same, shall from time to time be divided between and received by the said L. B., A. M., and C. D., in equal shares: AND I DO

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Gift of another one-third of the same property to testator's nephew, subject as aforesaid.

Gift of remaining one third to a woman, subject as aforesaid.

Son and nephew to conduct business for benefit of the legatees during their joint lives, or the duration of the lease of the brewery.

If the female

GIFT OF LEGACIES IN BAR OF CLAIMS, AND DISPOSITION OF BUSINESS ON TRUSTS.

HEREBY DECLARE and direct, that if the said C. D. shall refuse to accept the aforesaid bequest or disposition in her favour, or shall not declare her acceptance thereof by some writing under her hand, within two calendar months next after my decease, then and in such case my said trade or business shall be carried on by the said L. B. and A. M., during the residue which shall be to come at my decease of the said term of 21 years in my said brewery, if all of them, the said L. B., A. M., and C. D. shall so long live, in such manner and for the benefit of such persons as hereinbefore is expressed and directed, except that the one equal third share of the net profits which I have hereinbefore directed to be received by the said C. D., shall from time to time be invested by the said L. B. and A. M. in their own names, in or upon any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, but not in Ireland (*f*), with power for them to alter or vary the same from time to time at their discretion (*g*): AND I DIRECT that the said L. B. and A. M., and the survivor of them, and the executors or administrators of such survivor shall, until the expiration of twenty-one years, to be computed from my decease, or until the decease of the said C. D., (whichever shall first happen) accumulate all the interest, dividends, and annual produce of the stocks, funds, or securities, in or upon which the said last-mentioned third share of the said net profits shall from time to time be so laid out or invested as aforesaid, by investing the same interest, dividends, and annual produce, and all the resulting income and produce thereof in the way of compound interest, in, or upon any such stocks, funds, and securities as are hereinbefore mentioned, with such power of altering or varying the same from time to time as aforesaid (*h*). AND I FURTHER DIRECT that in case of

legatee refuse or do not signify her acceptance of the bequest, her share of the net profits to be invested.

—and accumulated for a certain period.

After business

(*f*) See ante, Vol. 4, p. 312, n. (*e*)

(*g*) See supra, p. 9, n. (*k*).

(*h*) See supra, p. 36, n. (*a*). As however the period of accumulation cannot, in the present case, exceed twenty-one years, none of the questions discussed in the note referred to can arise.

such refusal or non-acceptance of the said C. D. as aforesaid, the said L. B. and A. M., and the survivor of them, and the executors or administrators of such survivor, do, and shall immediately after my said trade or business shall cease to be carried on under the direction hereinbefore in that behalf contained, sell, call in, and convert into money the said equal third share hereinbefore bequeathed for the benefit of the said C. D., of and in the said brewhouse stock in trade, monies, securities, and premises hereinbefore bequeathed in equal third shares as aforesaid, after payment thereout of the one third share hereinbefore directed to be paid thereout of my said debts, funeral and testamentary expenses and legacies, or one equal third part of the capital or stock in trade which shall then belong to, or be employed in the said trade or business, under the direction hereinbefore in that behalf contained, and lay out or invest the monies to arise from such sale, calling in and conversion into money in their or his names or name, in any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, (but not in Ireland), with power for them or him to alter or vary the same from time to time, at their or his discretion (*i*), AND DO AND SHALL until the expiration of the said term of twenty-one years, to be computed from my decease, or until the said decease of the said C. D., (whichever shall first happen) accumulate the interest, dividends, and annual produce of the last-mentioned trust monies, stocks, funds, and securities in the same manner as is hereinbefore expressed with respect to the accumulation of the interest, dividends, and annual produce of the stocks, funds, or securities in or upon which the said third share hereinbefore directed to be received by the said C. D., of the said net profits, shall be laid out or invested as aforesaid (*k*). AND I DECLARE my will to be, that in case of such refusal or non-acceptance of the said C. D. as aforesaid, the said L. B. and A. M., or the survivor of them, or the executors or administrators of such survivor, do, and shall immediately after

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shall cease to be carried on, one third of the stock and effects to be converted into money and invested;

—and accumulated for the period aforesaid.

Disposition of the investments, and accumulations of such third share of profits and stock.

(*i*) See supra, p. 9, n. (*k*).

(*k*) See the last page, n. (*h*).

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the expiration of the said term of twenty-one years computed from my decease, or immediately after the decease of the said C. D. (which ever shall first happen), pay, transfer, or assign all and singular the trust monies, stocks, funds, and securities, of which the aforesaid respective trust monies arising respectively from the said third share hereinbefore bequeathed to the said C. D., of and in the said brewhouse, stock in trade, monies, and premises hereinbefore bequeathed in equal third shares as aforesaid, or from the said third share so directed to be sold, called in, and converted into money, as aforesaid, of the capital or stock in trade of the said trade or business, and the produce thereof respectively, and the accumulations of the same, and the said third share of the net profits hereinbefore directed to be laid out or invested as aforesaid, and the accumulations of which the same shall then consist, to the person or persons, who, if the said C. D. were then dead intestate, would be intitled under the statutes for the distribution of the personal estates of intestates, to the personal estate of the said C. D., such persons (if more than one), to take in the shares in which they would have taken or become entitled to the personal estate of the said C. D., if she were then dead intestate (*l*): PROVIDED ALWAYS, and I declare my will to be, that if the said C. D., shall at any time during her life, and before the expiration of the said term of twenty-one years computed from my decease, express by any writing under her hand, her acceptance of the provision and benefit intended for her by this my will, then and in such case, and immediately thereupon, the said L. B. and A. M., or the survivor of them, or the executors or administrators of such survivor shall stand and be possessed of and interested in the said third share, hereinbefore bequeathed for the benefit of the said C. D., of and in the said brewhouse, stock in trade, monies, and premises hereinbefore bequeathed in equal third shares as aforesaid, (after payment thereout of the said third share hereinbefore directed to be paid thereout of the said debts, funeral, aud testamentary

But the female legatee to be entitled, at any time before the period of distribution, to resume her share in the business, and profits, and investments.

(*l*) See ante, Vol. 4, p. 323, n. (*q*).

expenses, and legacies), or the one third share hereinbefore made subject to the aforesaid trust, for the benefit of the kin of the said C. D., of and in the capital or stock in trade of the said trade or business, or the produce of the sale, calling in, or converting into money of the same respectively, and the stocks, funds or securities in or upon which the same shall be laid out or invested, and all the accumulations of the same, and also of and in the trust monies, stocks, funds, or securities of which the trust fund, which shall have arisen from the investment and accumulation of the third share hereinbefore directed to be invested and accumulated as aforesaid, of and in the said net profits, shall then consist, in trust for the said C. D., her executors, administrators, and assigns; and thenceforth, in case my said trade or business shall then continue to be carried on under the trust or direction in that behalf hereinbefore contained, the said C. D. shall be absolutely entitled to the said last mentioned one third share of and in the future net profits of the said trade or business: AND I DO HEREBY direct, that as soon as may be after my decease, an account shall be taken of the book debts, money in hand and at my bankers', and money invested in government and other securities, of or to which I shall be possessed or entitled at my decease, as aforesaid, and of all the debts which shall be owing by me at my decease, in respect or on account of my said trade or business, or otherwise, and of my funeral and testamentary expenses and legacies; and as soon as may be after my decease, the said A. M. shall at his own costs and charges execute and give to the said L. B. a bond under the hand and seal of him, the said A. M., in a sufficient penalty for securing to the said L. B., his executors, administrators or assigns, for his or their proper use and benefit, the amount of the third part of my said book debts, (other than such of them, if any, as may be considered desperate), money in hand and at my bankers', and money invested in government or other securities, after deducting therefrom the amount of one third part of my said debts, funeral, and testamentary expenses, and legacies, with interest on such balance at the rate of £— per cent per annum, to be computed

GIFT OF LEGACIES IN BAR OF CLAIMS, AND DISPOSITION OF BUSINESS ON TRUSTS.

Proviso for taking an account of the testator's stock and effects, and direction that the nephew shall give to the son a certain bond.

GIFT OF LEGACIES IN BAR OF CLAIMS, AND DISPOSITION OF BUSINESS ON TRUSTS.

from my decease, the principal money to be made payable at the expiration of the said term of 21 years, for which my said brewhouse and premises are held by me on lease as aforesaid, or the decease of such one of the said L. B., and A. M., and C. D. as shall first depart this life, whichever shall first happen, and the interest for the same in the mean time to be made payable half yearly: AND I GIVE, devise, and bequeath all the rest, residue and remainder of the real and personal estate whatsoever and wheresoever, not hereinbefore devised, bequeathed, or disposed of, or to which I am now, or at the time of my death shall or may be seised, possessed, or entitled either at law or in equity, for any estate or interest which can be devised or bequeathed by will, or of which I now have power to dispose by this will, (except what I otherwise dispose of by any codicil to this my will), unto the said L. B., his heirs, executors, administrators, and assigns respectively, according to the nature and quality of the same respectively. AND I DO HEREBY expressly declare my will to be, that the said brewhouse, monies, and premises hereinbefore bequeathed in equal third shares as aforesaid, shall be primarily charged with and subject to the payment of my said debts, and funeral, and testamentary expenses, and legacies; and that if the same shall be insufficient for that purpose, the deficiency shall be borne by and paid out of my residuary, real and personal estates hereinbefore devised and bequeathed to the said L. B., his heirs, executors, administrators, and assigns respectively as aforesaid. [*Appointment of L. B. and A. M. executors, with powers to arrange, compromise, and compound, supra page* 14.—*Declaration, that the receipts of L. B. and A. M., or the survivor of them, or the executors or administrators of such survivor, or of the trustees or trustee for the time being, shall be discharges, supra page,* 15.—*Power to appoint new trustees, supra, pages* 15, 34. *Clauses for the indemnity of trustees and the payment of their expenses, supra pages* 17, 35.] IN WITNESS &c.

Gift of residue of real and personal estate.

Direction as to the fund to be primarily liable to funeral and testamentary expenses, debts, and legacies.

Usual clauses.

IV.

OF TRADE PROPERTY, WITH A LIMITED EXECUTORSHIP.

WILL *of* PERSONAL *Estate.* BEQUEST *of* STOCK *in trade,* TRADE DEBTS, *and Money at Bankers' standing to the credit of* TRADE, *to two of Testator's Sons, and* APPOINTMENT *of them to be* EXECUTORS *so far only as relates to the premises bequeathed to them (a).* DECLARA-

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(a) A testator may appoint distinct executors of different parts of his property; as A. for his plate and household stuff: B. for his sheep and cattle: C. for his leases: and D. for the debts due to him. Williams's Law of Executors, Part I. book iii. Chap. 3; *Austre* v. *Audley*, 1 Roll. Abr. 914, (S) pl. 4. Or may make A. executor for a particular part of his property (as in the case in the text), and B. general executor. Id. *Lynch* v. *Bellew*, 3 Phill. 424. It seems uncertain whether, if a testator appoint only a special executor for certain property, and no general executor, the special executor will be also general executor. *Rose* v. *Bartlett*, Cro. Car. 293. But although a testator may thus appoint distinct special executors, yet in regard to creditors they are all executors as one executor, and may be sued as one executor. *Rose* v. *Bartlett*, ubi supra.

Appointment of special executors for certain parts of the testator's property.

The appointment of separate executors of different parts of the testator's property, is not a usual practice, but there are cases in which it is highly convenient. In cases like that in the text, for instance, where legal choses in action being specifically bequeathed, the legatee, if not made executor as to his own legacy, cannot receive it, except through the intervention, or by using the name of the general executor. So, too, where leaseholds are specifically bequeathed, it is convenient to make the legatee special executor as to that part of the property; for, as the executor is liable, on the covenants even after he has assented to the bequest, it is obviously expedient, that this liability should be shifted from the general executor to the beneficial legatee. So again, where a creditor appoints a debtor his executor, or one of his executors, without qualification, the appointment (unless the executor renounce or refuse to act), extinguishes the debt at law, (though not in equity), since the debtor would be a necessary party as plaintiff in an action against himself. Williams's Law of Executors, Part III. book iii. chap. 2, sect. 9, div. 2. This inconvenience is best avoided by appointing a distinct executor of the debt, although

Practice unusual, but in many cases convenient.

OF TRADE PROPERTY, WITH A LIMITED EXECUTORSHIP.

TION *that the Sons shall hold the premises bequeathed to them,* UPON TRUST, *to collect the trade debts within two years from the testator's death, and within that time, to pay the same, and the money at the Bankers', to the testator's general executors,* AND UPON TRUST *to pay the debts due from the trade out of the stock in trade.* SUBJECT *thereto the stock in trade and goodwill to belong to the sons absolutely.* BEQUEST *of a leasehold house and household effects to testator's wife.* GENERAL BEQUEST OF RESIDUE *upon usual trusts.* APPOINTMENT *of* GENERAL EXECUTORS *with usual powers.*

I, A. B., of, &c. do hereby revoke, &c. [*Supra page* 2]. I GIVE AND BEQUEATH unto my two sons D. B. and E. B., their executors, administrators, and assigns, All the machinery, implements, utensils, plant, stock in trade and effects, which shall be used or employed by me in my trade or business of ——, at the time of my decease, and the goodwill of the said trade or business, and all the book and other debts which shall then be due, or owing to me on account of the said trade or business, and all the money which shall be in my bankers' hands at my death, and standing to the credit of the account of the said trade or business: AND I APPOINT my said sons executors of this my will, so far as relates to the said machinery, implements, utensils, plant, stock in trade, effects, goodwill, book and other debts, money, and premises hereinbefore bequeathed to them. AND I DIRECT that the expense of taking out the limited probate to be taken out by my said sons, shall be borne by them (*b*). AND I DO HEREBY authorize and empower the executors or executor for the time being, acting in the limited executorship hereinbefore constituted, to pay and satisfy any debts owing, or claimed to be owing by or from

Bequest of stock in trade, trade debts, and property to testator's sons;

—and appointment of them to be executors in regard to the property bequeathed to them.

—expense of limited probate.

Usual power to executors to arrange and compound.

sometimes the debtor is appointed executor only after the debt has been paid. Godolph 77; Hobart 265; 3 Bac. Abr. 29.

(*b*) See the last note.

me, on account of the said trade or business, and any liabilities to which I or my estate may be subject, or may be alleged to be subject on account of the same, upon any evidence they or he shall think proper; and to accept any composition or any security real or personal, for any debt or debts owing to me on account of the said trade or business; and to allow such time (not exceeding two years from my death) for the payment of any such debt or composition for a debt (either with or without taking security for the same), as to the said executors or executor shall seem reasonable. And also to compromise and compound, or submit to arbitration, and adjust and settle all debts, accounts, transactions, matters, and things, which shall be owing, or claimed to be owing from or to me or my estate, or be depending or arise between me or my aforesaid executors or executor, and any other person or persons on account or in respect of the said trade or business. And for any of the purposes aforesaid, to enter into, give, sign, make, do, and execute such deeds or instruments of composition, bankrupt's certificates, releases, bonds, or instruments of submission to arbitration, and other instruments, acts, deeds, matters, and things as the said executors or executor shall think expedient; and to abide by, observe and perform, or to contest or dispute any instrument or transaction which may have been made or entered into as aforesaid, or any award or awards to be made in pursuance of any such submission to arbitration as aforesaid; and generally, to act in relation to the premises in such manner as they or he shall think expedient, without being liable for any loss which may be occasioned thereby (*c*). AND I DECLARE that the said D. B. and E. B., their executors and administrators shall stand possessed of and interested in the premises hereinbefore bequeathed to them UPON TRUST, that they, the said D. B. and E. B., and the survivor of them and the executors and administrators of such survivor, do and shall within the space of two years from the day of my death, call in, collect, and receive all and singular, the book and other debts which at

OF TRADE PROPERTY, WITH A LIMITED EXECUTORSHIP.

Declaration;

—that within two years the son shall collect the debts and money, and pay them to the testator's general executors;

(*c*) See supra, p. 15, n. (*s*).

OF TRADE PROPERTY, WITH A LIMITED EXECUTORSHIP.

the time of my death shall be due or owing to the said trade or business, and the said money standing to the credit thereof in my bankers' account as aforesaid, and do and shall, at or before the expiration of the said two years, pay all and singular the sum and sums of money which shall be received by them or him, on the account aforesaid unto E. F. of &c., G. H. of &c., and J. K. of, &c., their executors, administrators or assigns, upon and for the trusts, intents, and purposes hereinafter declared and contained of and concerning the same: AND UPON FURTHER TRUST, that they, the said D. B. and E. B. and the survivor of them, and the executors and administrators of such survivor, do and shall, by and out of the said machinery, implements, utensils, plant, stock in trade and effects hereinbefore bequeathed to the said D. B. and E. B., pay, discharge, and satisfy all and singular the debts which at the time of my death shall be legally due or owing from me, on account or in respect of the said trade or business; and save harmless and indemnified my general estate therefrom, and from all actions, suits, accounts, reckonings, losses, costs, damages, claims, and demands in respect of the same debts, or otherwise in respect of the said trade or business; AND SUBJECT thereto, do and shall stand possessed of and interested in the said machinery, implements, utensils, plant, stock in trade, and effects, and also of and in the goodwill of the said trade or business, Upon trust for my said sons D. B. and E. B., and their respective executors, administrators, and assigns, in equal shares for their own use and benefit. I GIVE AND BEQUEATH all that my leasehold messuage, tenement, or dwelling-house in which I now reside, situate at ————, and all the term, estate, and interest which shall be to come therein at my death, and all the plate, linen, glass, books, pictures, wines, liquors, stores, and household goods and furnitures of or to which I shall be possessed or entitled at the time of my death, unto my wife C. B., for her own use, she paying the rent, and observing and performing the covenants and conditions in the lease of the same messuage contained, and on the part of the lessee, his executors, administrators, or assigns, to be observed or performed, and keeping my general estate

—and discharge the trade debts out of the residue of the trade property;

—and subject thereto hold the residue for their own benefit.

Bequest of a leasehold messuage and household effects to the testator's wife.

harmless and indemnified therefrom, and from all actions, suits, accounts, reckonings, claims, and demands in respect of the same (*d*). I GIVE AND BEQUEATH all the money, securities for money, goods, chattels, rights, credits, and other personal estate whatsoever and wheresoever of or to which I am now, or at the time of my death, shall or may be possessed or entitled at law or in equity, for any estate or interest which can be beqeathed by will, or of which I now have power to dispose by this my will (except what I otherwise beqeath or dispose of by this my will, or any codicil hereto), unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, UPON TRUST that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor do and shall, as soon as conveniently may be after my death, call in, sell, dispose of, and convert into money, all such and so many, and such part and parts of the said money, securities for money, goods, chattels, rights, credits, and other personal estate as shall not consist of ready money, and do and shall stand and be possessed of and interested in the money to arise from such calling in sale, disposition, and conversion into money, and of and in the ready money of or to which I shall be possessed or entitled at the time of my death, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained, of and concerning the same: AND I HEREBY declare my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall stand possessed of and interested in the monies to arise from the calling in, sale, disposition, and conversion into money of all such and so many, and such part and parts as are hereinbefore directed to be called in, sold, disposed of, and converted into money, of the said money, securities for money, goods, chattels, rights,

OF TRADE PROPERTY, WITH A LIMITED EXECUTORSHIP.

General bequest of personal estate to trustees.

Upon trust to convert into money.

Trusts of the money to arise from such conversion, and the money to be paid by the sons out of the trade.

(*d*) There might be an advantage in appointing the wife executrix as to the lease bequeathed to her: see suprs p. 47 n. (*a*).

OF TRADE PROPERTY, WITH A LIMITED EXECUTORSHIP.

credits, and other personal estate lastly hereinbefore bequeathed, and of and in the said ready money of or to which I shall be possessed or entitled at the time of my death, and the money which shall be received by them or him from my said sons or son on account of the said trade or business, in pursuance of the trust or direction in that behalf hereinbefore contained, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor do and shall, by and out of the same, pay and discharge my funeral and testamentary expenses, and my debts (other than the debts hereinbefore directed to be paid by my said sons), and the costs and expenses to be incurred in or about the sale or sales, calling in, disposition, or conversion into money aforesaid, or otherwise in or about the execution of the trusts aforesaid, or in relation thereunto, and the legacies bequeathed by any codicil to this my will; AND DO AND SHALL lay out and invest the surplus or residue of the said monies in the names or name, &c.; [*Trust for investment, suprà, page* 8. *Trust to pay the income to the wife for her life, and after her death upon the trusts for the benefit of the children, contained in Precedent* I, *supra, pp.* 9, 10. *Clauses, supra, pp.* 10, 11. *Devise of trust and mortgage estates, supra, p.* 13. *Appointment of Guardians, see supra, pp.* 14 *and* 34]. AND I DO HEREBY nominate and appoint the said E. F., G. H., and I. K., executors of this my last will and testament (except as to the said machinery, implements, utensils, stock in trade, effects, good-will, book and other debts, money, and premises hereinbefore bequeathed to my said sons D. B. and E. B.); AND do authorize and empower the executors or executor for the time being acting in the execution (except as aforesaid) of this my will, to pay and satisfy any debts owing, or claimed to be owing, by or from me or my estate (except such as may be owing, or claimed to be owing, on account of the said trade or business), and any liabilities to which I or my estate may be subject, or may be alleged to be subject (except on account of the said trade or business), upon any evidence they or he shall think proper, and to accept

To pay funeral and testamentary expenses, debts, and legacies.

Usual trusts of surplus.

Appointment of general executors;

with usual power to arrange and compound.

any composition, or any security real or personal for any debt or debts owing to me or my estate (except on account of the said trade or business) and to allow such time for the payment of any such debt or composition for a debt, either with or without taking security for the same, as to the said executors or executor shall seem reasonable; and also to compromise and compound, or submit to arbitration, and adjust and settle, all debts, accounts, transactions, matters, and things (not relating to the said trade or business) which shall be owing, or claimed to be owing, from or to me or my estate, or be depending or arise between me or my said last named executors or executor, and any other person or persons; and for any of the purposes aforesaid, to enter into, give, sign, make, do, and execute such deeds or instruments of composition, bankrupts' certificates, releases, bonds, or instruments of submission to arbitration, and other instruments, acts, deeds, matters, and things, as the said last-named executors or executor shall think expedient; and to abide by, observe, and perform, or to contest or dispute any instrument or transaction which may have been made or entered into as aforesaid, or any award or awards to be made in pursuance of any such submission to arbitration as aforesaid; and generally to act in relation to the premises in such manner as they or he shall think expedient, without being liable for any loss which may be occasioned thereby; AND I HEREBY DECLARE, that the receipt and receipts in writing of the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, or of the trustees or trustee for the time being, acting in the execution of the trusts of this my will, for any sum or sums of money which may become payable under or by virtue of this my will, or in the execution of the trusts hereof, shall be a good and effectual discharge, and good and effectual discharges for the money therein respectively acknowledged to be received; and shall to all intents and purposes discharge the person or persons taking such receipt or receipts, his, her, or their heirs, executors, or administrators, from seeing to the application, or being accountable or an-

OF TRADE PROPERTY, WITH A LIMITED EXECUTORSHIP.

Trustee's receipt clause.

OF TRADE PROPERTY, WITH A LIMITED EXECUTORSHIP.

swerable for the misapplication or non-application of the same or any part thereof. [*Power to appoint new trustees, supra, pp.* 15, 34. *Clauses for the indemnity of trustees and the payment of their expenses, supra, pp.* 17, 18, 35]. IN WITNESS &c.

V.

OF A TRADER, WITH SPECIAL CLAUSES.

WILL *of* REAL *and* PERSONAL *Estate.* BEQUEST *of* LEGACIES *to Daughters.* ONE *to an* INFANT *to fall into* RESIDUE *on her Death under Twenty-one, but the* INTEREST *to be paid to her in the mean time.* LEGACIES *of Daughters* DYING *in Testator's lifetime to go to their* CHILDREN. LEGACY *to a* CHARITY. GIFT *of* RESIDUE *to* CHILDREN EQUALLY, *and* SETTLEMENT *with* SPECIAL TRUSTS *for* INVESTMENT *of the Shares of* DAUGHTERS, *and of* SONS DYING *in the Testator's lifetime leaving Children.* POWER *for* DAUGHTERS *to give* LIFE *Interests to their* HUSBANDS, *and to Trustees to* VARY *the* SETTLEMENTS. USUAL CLAUSES. POWER *to lay out Trust-*MONIES *in* LANDS *to to be held as Personal Estate.* POWER *to* ALLOT *and* APPROPRIATE *the Testator's Property* SPECIFICALLY *among the Legatees of the Produce.* TENANTS FOR LIFE *to take* INCOME *from* DEATH. PORTIONS *subsequently advanced to be pro tanto* SATISFACTION *of* LEGACIES. POWERS *for* CLOSING *and* CARRYING ON *Partnership and other* BUSINESSES *of the Testator.* APPOINTMENT *of* EXECUTORS *not to extinguish their* DEBTS *to the Testator.*

Recital that the testator has nine children,

I, A. B., of &c. [*supra, page* 2.] AND WHEREAS I have nine children at present living, who are hereinafter named

according to their respective seniorities of age (that is to say), C. D., the widow of ———, deceased, D. B., E. B., F. B., G. B., H. B., I. B., K. B., and L. B., all of whom have attained the age of twenty-one years, except my said daughter L. B., who is of the age of eighteen years or thereabouts: AND WHEREAS I have already given the sum of £—— to the said C. D., or to her and her said late husband, and the like sum to each of my five next eldest children; Now with a view of placing my other children on the same footing as my said six eldest children, I BEQUEATH to each of them my said other children, *viz.* the said I. B., K. B., and L. B., the like sum of £——, with interest thereon at the rate of £—— per cent. per annum, from the day of my decease until the payment thereof, such interest to be paid half-yearly; PROVIDED ALWAYS, that in case at my decease my said daughter L. B. shall be under the age of twenty-one years, and shall not then have married with my consent, then and in such case the legacy of £—— hereinbefore bequeathed to her shall be retained by the executors or executor for the time being acting in the execution of this my will; UPON TRUST to pay the same to her when, and if, she shall attain the age of twenty-one years, or marry with the consent of her guardians or guardian for the time being, which ever shall first happen; AND UPON FURTHER TRUST in the mean time to pay the interest of her said legacy to her half-yearly as aforesaid; And I declare that notwithstanding her infancy, her receipt shall be an effectual discharge for such interest; AND IF my said daughter L. B. shall not attain the age of twenty-one years, or marry with such consent as aforesaid, the same legacy shall, immediately upon her decease, sink into and form part of my general residuary estate; PROVIDED ALSO, that in case any of my said daughters I. B., K. B., and L. B., shall die in my lifetime, leaving children or a child who shall be living at my decease, then and in such case I BEQUEATH the legacy of £——, so as aforesaid intended for every or any daughter so dying, with interest thereon as aforesaid, unto E. F., of &c., G. H., of &c., and I. K., of &c., their executors and administrators, IN TRUST for all and every

the youngest daughter being an infant;

—of his having given portions of equal amount to his six eldest children.

Bequest of legacies of the same amount to the three younger children.

The legacy of the infant daughter to be retained by the testator's executors;

—till she attain twenty-one or marry;

—paying her interest thereon in the mean time, for which her receipt is to be a discharge.

If such daughter do not attain twenty-one or marry, the legacy to fall into the residue.

Bequest to trustees of the legacies of daughters dying in the testator's lifetime leaving children,

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her children and child who shall be living at my decease, and who being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age, or marry under that age, with the consent of their or her guardians or guardian for the time being, if more than one in equal shares, and if but one such child, the whole to be for such one child; AND IF there shall be no child of any daughter so dying, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age, or marry under that age with such consent as aforesaid, then in default or failure of such issue of such daughter, the legacy hereinbefore provided for her, or such her issue, shall sink into and form part of my general residuary estate.

In trust for such children;

—and on failure of such, to fall into the residue.

Bequest to a charitable institution free of legacy duty.

I BEQUEATH the sum of £—— to the governors of ———, for the benefit of that institution, and I declare that the receipt of the treasurer for the time being of the said ——, shall be an effectual discharge for the same legacy, which I direct to be paid within one calendar month after my decease out of my personal estate (*a*), without any deduction on account of the legacy duty thereon, which I direct to be likewise paid out of my said personal estate.

Legacy to a servant, if in the testator's service at his death.

I BEQUEATH to my servant ———, in case she shall be in my service at the time of my decease, the sum of £——, over and above any monies which may be then due or owing to her by me for wages or otherwise; and I direct the last-mentioned legacy to be paid within one calendar month after my decease, free from legacy duty [*General devise of real and personal estate in trust for sale, and conversion into money, supra, pp.* 4, 7. *Direction to pay out of the produce funeral and testamentary expenses, debts, legacies, and trust expenses, supra, page* 7];

General devise of real and personal estate, and trusts of the money to arise.

AND DO AND SHALL pay and divide the surplus or residue of the said monies among all

The residue of such money to be held in trust

Legacies to charities to be paid out of personal estate.

(*a*) Legacies to charities must be directed to be paid exclusively out of the pure personal estate, for otherwise they will abate in the same proportion that the produce of the testator's land, or interests in land, bears to the produce of the pure personal estate, 2 Pow. on Devises, by Jarman, Ch. 2; particularly pp. 24, 30: see too the recent cases of *Collinson* v. *Pater*, 2 Russ. & My. 344: *Cherry* v. *Mott*, 1 My. & Cra. 123.

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such of my said children as shall be living at my decease in equal shares: PROVIDED ALWAYS, and I hereby declare that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor do and shall lay out and invest every share of and in the same monies which is hereinbefore expressed to be given to a daughter living at my decease (including my said daughter L. B.), in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain or Ireland, or of any foreign country, or at interest upon British or foreign government securities, or upon freehold, copyhold, or leasehold securities in England, Wales, or Ireland, whether held in fee-simple or for lives, or for years determinable with lives, or for years absolute, or in the purchase of stock or securities of the Bank of England or East India Company, or of the shares, bonds, debentures, or securities of any dock, canal, railway, or banking company, carrying on business only in Great Britain or Ireland, with power from time to time, when and as he or they shall think proper, to alter, vary, and transpose the said stocks, funds, or securities, or any of them, into or for other stocks, funds, or securities of the same or a like nature; BUT SO NEVERTHELESS, that in every case where any person who shall, under the trusts hereinafter declared, be for the time being, beneficially entitled to the interest, dividends, and annual produce of the trust-monies, stocks, funds, or securities so for the time being to be invested or varied, shall be of the age of twenty-one years, such investment or variation shall be made only with her or his consent in writing; and as regards any female, such consent shall be effective, whether she shall be covert or sole; AND DO AND SHALL, during the life of each such daughter, pay the interest, dividends, and annual proceeds of her said share, or of the stocks, funds, and securities in or upon which the same may be laid out or invested to such daughter for her sole and separate use, independently and exclusively of her husband (if any) for the time being, and of his debts, control, interference, and engagements; but so nevertheless that such daughter shall not have power to

for testator's children equally.

Daughter's shares to be invested by the trustees in various public and private securities;

—but all investments to be made with the consent of the cestui que trusts of the income if of age.

—and the income paid to the several daughters for their separate use;

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deprive herself of the benefit thereof, by any disposition thereof by sale, mortgage, charge, or otherwise, in the way of anticipation, and the receipts of each such daughter, whether covert or sole (and as to my said daughter L., notwithstanding her infancy), to be good and effectual discharges for the interest, dividends, and annual proceeds of her share; AND FROM and after the death of each such daughter do and shall stand possessed of and interested in the share hereinbefore given to her of the monies aforesaid, and of and in the stocks, funds, and securities in or upon which the same may be laid out or invested, and the interest, dividends, and annual produce thereof, IN TRUST for all and every or such one or more, exclusively of the others or other of the children of such daughter, with such provision for their respective maintenance and education, or advancement at such age, day, or time, or respective ages, days, or times; and if more than one in such parts, shares, and proportions, and with such annual sums of money and limitations over for the benefit of the said children, or some or one of them, and upon such conditions, with such restrictions and in such manner as such daughter, whether covert or sole, shall by any deed or deeds, writing or writings, to be sealed and delivered by her in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, at any time or times direct or appoint. AND IN DEFAULT of, and until such direction or appointment, and so far as no such direction or appointment shall extend, IN TRUST for all and every the children and child who shall be living at my decease, or be born afterwards of such daughter, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry under that age with the consent of her or their guardians or guardian for the time being, if more than one, in equal shares, and if there shall be but one such child, the whole to be in trust for such one child: PROVIDED ALWAYS, and I do hereby declare my will to be, that no child or children

—and on their deaths the capital of their shares to be

—In trust for their respective children, as they shall appoint;

—and in default of appointment, in trust for their children equally who attain twenty-one, or being daughters, marry.

Hotchpot clause.

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of such daughter, taking any part of the trust-monies, stocks, funds, and securities hereinbefore provided for him, her, or them, under or by virtue of any direction or appointment to be made by his, her, or their mother, in pursuance of the power or authority hereinbefore contained, shall have or be entitled to any further or other share of, or in that part of the same trust-monies, stocks, funds and securities, of which no such direction or appointment shall have been made as aforesaid, without bringing his, her, or their appointed share or shares into hotchpot, and accounting for the same accordingly. AND I HEREBY further declare my will to be, that if there shall be no child of such my daughter, who being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age, or marry under that age with such consent as aforesaid, then after the decease of such my daughter, and such default or failure of her issue as aforesaid, which shall last happen, the said E. F., G. H., and I. K., their executors, administrators, and assigns, do and shall stand possessed of and interested in the share of such my daughter in the aforesaid trust-monies, and in the stocks, funds and securities in or upon which the same share may be laid out or invested, and of and in the interest, dividends, and annual produce thereof, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations as such my daughter, whether covert or sole (and as to my said daughter L., notwithstanding her infancy, if she shall have married with my consent, or with the consent of her guardians or guardian for the time being) shall by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by such my daughter in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, at any time or times direct or appoint: AND THAT in default of, and until such last-mentioned direction or appointment, and so far as no such direction or appointment shall extend, as well the original share of such daughter as any share or shares which may accrue to her under

In default of children entitled, the capital of each daughter's share to go as she shall appoint.

—and in default of appointment, to accrue to the other children of testator in equal shares.

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this present provision shall accrue to my other children (sons and daughters), who shall be living at my decease, in equal shares, but so, nevertheless, that the share or shares which shall so accrue to any of my said daughters, shall be held upon and for the trusts, intents and purposes, and with, under, and subject to the powers, provisoes, and declarations herein declared, expressed, and contained, of and concerning their several original shares, or as near thereto as circumstances will then admit: PROVIDED ALWAYS, and I hereby declare my will to be, that notwithstanding the trusts hereinbefore declared in favour of the children of my said daughters I., K., and L., it shall be lawful for each of my said last-mentioned daughters, when married, and notwithstanding her coverture (and as to my said daughter L., notwithstanding her infancy, if she shall have married with my consent, or with the consent of her guardians or guardian for the time being), by her last will and testament in writing, or any codicil or codicils thereto in writing, or any writing or writings in the nature of or purporting to be a will or codicil to direct or appoint that all or any part of the interest, dividends, or annual proceeds of her original and accruing share or shares of the aforesaid trust monies, stocks, funds, and securities, shall immediately from and after her decease, be paid to her husband during his life, or for any less period. PROVIDED ALWAYS, and I hereby further declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor at any time or times during the life of any of my said daughters I., K., and L., either before or after her marriage, but so that the same be in contemplation and in consideration of her first or some subsequent marriage, or after any such marriage, and during the continuance of her coverture, and so that the same be with her consent in writing, (which consent, as respects my said daughter L., shall be effective, notwithstanding her infancy), by any deed or deeds, to alter or vary all or any of the trusts, powers, and provisoes hereinbefore or hereinafter declared and contained, of and concerning the said original or accruing share or shares of such

Power to each daughter to give a life interest in the income of her share to her husband.

Power to the trustees notwithstanding preceding trusts to settle the daughters' shares on them, their husbands, and children.

—but with daughters' consent.

daughter of and in the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual proceeds thereof, or any part thereof respectively, either by authorizing such share and accruing portion or portions, or any part thereof respectively, to be advanced and lent on the bond or other personal security of her husband, or then intended husband, or on any other security, or by declaring and making trusts and provisions of and concerning such share and accruing portion or portions, and the interest thereof, or any part thereof respectively, in favour and for the benefit of her children or child, or any of such children, different from the trusts and provisions hereby made and declared concerning the same, in favour and for the benefit of such children or child, or any of such children, or by giving any such husband or intended husband, the first life interest in the interest, dividends and annual produce of the said share or shares, or of any part thereof respectively, or by absolutely vesting such share or shares, or any part thereof respectively, in such daughter, or such husband, or intended husband, discharged from all trusts and provisions, or by declaring and making such other trusts and provisions of and concerning such share or shares, and the interests, dividends, and annual produce thereof or any part thereof respectively, as the said trustees or trustee for the time being, with such consent as aforesaid, may deem expedient. AND I particularly and expressly declare, that the said trustees or trustee for the time being shall not be answerable or accountable in any court of equity or otherwise, either for the exercise or non-exercise of the power lastly hereinbefore contained, or as to the mode or manner of the exercise thereof, it being my intention that such trustees or trustee shall have an entire and uncontrollable discretion as to the same, such consent as aforesaid being obtained to the exercise thereof. PROVIDED ALWAYS, and I hereby further declare my will to be that, in case any of my said daughters shall die in my lifetime leaving children or a child, who shall be living at my decease, then and in such case, as well the original as the accruing share or shares hereinbefore or hereinafter provided for such daughter and her issue, and otherwise as aforesaid,

Trustees to have absolute discretion and freedom from control in respect of such settlement.

The shares of daughters dying in testator's lifetime, leaving children, to be held upon the trusts previously declared for the benefit of such children.

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in the event of her being living at my decease, of and in the said trust-monies shall be held and applied upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, upon, for, with, under, and subject to which the same would, under or by virtue of this my will, have been held and applied, in case such daughter had been living at my decease, and had died immediately after my decease. PROVIDED ALWAYS, and I hereby further declare, that in case any of my said five sons shall die in my lifetime, leaving children, or a child, who shall be living at my decease, or be born afterwards, then and in such case, as well the original as the accruing share or shares hereinbefore, or by this present clause or proviso provided for each such son in the event of his being living at my decease, of and in the said trust-monies, shall be IN TRUST for all and every the children and child of the son so dying who shall be living at my decease or be born afterwards, and who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age, or marry under that age with the consent of her or their guardians or guardian for the time being, if more than one, in equal shares, and if but one such child, in trust for such one child, and with the same powers of investment and varying securities as are hereinbefore contained with regard to the shares of my said daughters. AND IF there be no child of such son so dying as aforesaid, who being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age with such consent as aforesaid, then after such default or failure of issue, as aforesaid, as well the original as the accruing share or shares of such son shall accrue to my other children (sons and daughters) who shall be living at my decease, in equal shares; and the share or shares which shall so accrue as last mentioned to any of my daughters shall be held and applied upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations herein declared, expressed, and contained, of and concerning her or their original share or shares, so far as circumstances will then admit: PRO-

The shares of sons dying in the testator's lifetime, to be in trust for their children.

—and if there be no such children, to accrue to the testator's other children in equal shares.

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VIDED ALWAYS, and I hereby further declare, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times, if they or he shall see fit so to do (but so that in regard to any of the monies in which any of my daughters or their respective husbands may have a prior life or other interest, the same be with her or his consent in writing, while she or he may have such interest, and in respect to such daughter, whether covert or sole, and so that in regard to all the aforesaid monies, the same be subject, and without prejudice to any other prior interest or interests, whether contingent or not), to raise and apply all or any part or parts of the then vested or then presumptive share of any or every child of any of my daughters or sons, of and in any of the monies hereby provided for the children of my sons and daughters, for or towards the respective preferment, advancement, or benefit of such child: PROVIDED ALWAYS, and I hereby further declare, that, during so long as the portion or portions of any child or children of any of my daughters or sons, of and in any of the shares hereby provided for such child or children in the aforesaid trust-monies (including the legacies of £——, hereinbefore bequeathed in trust as aforesaid, in the event of any of my said three youngest daughters dying in my lifetime as aforesaid), shall not be absolutely vested, it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor from time to time (but as to any of the monies in which any of my daughters or their respective husbands may have a prior life or other interest, subject, and without prejudice to such interest or interests, and as to all the aforesaid monies, subject, and without prejudice to any other prior interest or interests, whether contingent or not), to pay and apply all or so much as the said trustees or trustee shall think proper, of the interests, dividends, and annual produce of such share or shares, for or towards the respective maintenance and education of the child or children for the time being entitled thereto, presumptively or in expectancy as aforesaid: AND DO AND SHALL, [*accu-*

Advancement clause as to the children of daughters and sons.

Maintenance clause as to the children of daughters and sons.

Accumulation clause.

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mulation clause, see supra, p. 11.] PROVIDED ALWAYS, and I hereby further declare, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times, with the consent in writing (and as regards any female, whether covert or sole), of the person for the time being beneficially entitled to receive the interest, dividends, or annual produce of any such trust-monies, stocks, funds, or securities as aforesaid, if there shall be any such person, and such person shall be of the age of twenty-one years, but if not, then at the sole discretion of the said trustees or trustee for the time being, to dispose of, call in, and convert into money, the whole or any part of such trust-monies, stocks, funds, and securities, and to lay out and invest the money arising therefrom, or any part thereof, in the purchase of any freehold, copyhold, or customary manors, messuages, lands, tenements, or hereditaments in England or Wales, for any estate of inheritance, or any leasehold messuages, lands, tenements or hereditaments in England or Wales, for any term of years, whereof not less than sixty years shall be to come and unexpired at the time of such purchase, to be conveyed, surrendered, or assigned to them, the said E. F., G. H., and I. K., or the survivors or survivor of them, and their or his heirs, executors, administrators, and assigns, according to the nature of the estate, or interest therein, UPON TRUST, nevertheless, that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, do and shall, with such consent, or at such discretion as last aforesaid, absolutely sell and dispose of the said manors, messuages, lands, tenements, or hereditaments, which shall have been so purchased as aforesaid, either entirely and altogether, or in parcels, and either by public auction or private contract, for such price or prices, and upon such conditions, and with such stipulations as to title or evidence of title, or otherwise, and in such manner in every respect, as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors or administrators of such survivor shall think fit, with full power to buy in the

Power to lay out trust monies in the purchase of land.

—to be held in trust for sale.

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said premises, or any part thereof, at any sale or sales by auction, and to rescind, abandon, or vary any contract for sale, and to resell the premises which shall be so bought in, or the contract for the sale of which shall be so rescinded or abandoned as aforesaid, without being in anywise answerable for any loss which may happen thereby respectively. AND DO AND SHALL stand and be possessed of and interested in, and apply the money arising from any such sale (after payment of the costs, charges, and expenses attending the same), upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, and declarations (including the said power of purchasing freehold, copyhold, and leasehold hereditaments), as the money so raised and laid out in the purchase of such manors, messuages, lands, tenements, or hereditaments was subject to before such purchase was made, or would then have been subject to, if the same had not been laid out therein. AND DO AND SHALL, in the mean time, and until such manors, messuages, lands, tenements, or hereditaments shall be so sold, pay and apply the rents, issues, and profits thereof, (after deducting necessary outgoings), to the persons, for the intents and purposes, and in the manner, to, for, and in which the interest, dividends, and annual produce of the money laid out in the purchase thereof, would have been payable and applicable, under the trusts hereinbefore declared, in case such purchase had not been made, IT BEING my intention that the manors, messuages, lands, tenements, and hereditaments which shall be purchased under this present power, shall, when so purchased, be considered as money, and be subject to such and the same trusts in all respects as the money laid out in the purchase thereof was subject to, before such purchase was made, or would have been subject to, if the same had not been so laid out; AND THAT it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, in the mean time, until the same manors, messuages, lands, tenements, and hereditaments shall be so sold as aforesaid, at their or his discretion, to lease the

—the purchase money to be held upon the trusts of the original trust-monies.

Rents and profits of the lands, till sold, to go as the income of the trust monies,

—and the lands to be held and go as money.

Power of leasing.

OF A TRADER, WITH SPECIAL CLAUSES.

same or any parts thereof, at rack-rent, for any term or terms of years not exceeding twenty-one years, to take effect in possession, and under the usual covenants and conditions on the part of the lessees. AND I EXPRESSLY DECLARE that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, shall in every case have the most full and entire discretion as to the choice of the stocks, funds, and securities, in or upon which the said trust-monies, or any part thereof, may be invested as aforesaid; and as to the exercise or non-exercise of the said power lastly hereinbefore contained, of purchasing lands or other property and the choice of the property which may be so purchased, and in other respects in relation to the provision lastly hereinbefore contained, but so that in the case or cases hereinbefore particularly mentioned, such consent as aforesaid be obtained. PROVIDED ALWAYS, and I hereby expressly declare, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall either forthwith after my decease sell my leasehold houses and canal shares, and other saleable property, or defer so to do, as to the whole or any part thereof, until any future period or periods, as they or he, of their or his proper authority, and at their or his sole discretion, may think most expedient and advantageous under all the circumstances, for the several parties beneficially interested in my estate, without being answerable for any loss, injury, or prejudice which may in consequence thereof be sustained, arise, or happen by or to the parties so beneficially interested, or any of them. PROVIDED ALWAYS, and I hereby expressly declare, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times after my decease, but so that all my children who may for the time being be living and of age, consent thereto in writing (the consent of each daughter for such purpose to be effective, whether covert or sole), instead of selling the same, to appropriate and allot my canal shares, or any of them, or any other part of my property in

Trustees to have the amplest discretion and freedom from liability as to all purchases and investments.

Power to the trustees, with certain consents, to allot and appropriate amongst the legatees, parts of the testator's property in satisfaction of their shares.

or towards satisfaction of the legacies and the shares in my estate hereby bequeathed in favour of my children or their issue and otherwise as aforesaid, or any of such legacies and shares, and every or any such appropriation and allotment, shall take effect from such period or periods, and be made for or in respect of such sum, and in other respects in such manner as may be deemed fair and proper by the said trustees or trustee for the time being, such consent being obtained as aforesaid, and the canal share or shares, or property which may be appropriated and allotted in or towards satisfaction of any legacy or share which, under any of the provisions herein contained, is to remain vested in and be held by the said trustees or trustee for the time being, upon trust as aforesaid, shall remain vested in and be held by the said trustees or trustee for the time being, and the dividends thereof applied upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which, the stocks, funds, and securities hereinbefore authorized to be purchased as aforesaid, by or out of such legacy or share, and the interest, dividends, and annual produce thereof are or is hereinbefore directed to be held and applied, AND WITHOUT meaning to make it obligatory on my said trustees or trustee, or my children, to make such appropriation and allotment, I recommend that in particular such appropriation and allotment of my canal shares, or of part thereof, be made as aforesaid: AND INASMUCH as it may be deemed expedient by my children in general, that one or more of my said sons —— and —— shall have appropriated and allotted to him or them, in or towards satisfaction of his or their share or shares, some part of the said canal shares or other property, I expressly authorize such appropriation and allotment to be made to him or them, with such consent as aforesaid, notwithstanding that such son or sons is or are hereby appointed to act in the execution of this my will (*b*). PROVIDED ALWAYS, and I hereby

Recommendation that certain property shall be so allotted.

Direction that such allotment may be made to the sons who are appointed executors.

Income of the

(*b*) This does not appear from the precedent, as the ordinary initials have been retained for the executors and trustees, instead of the initials of the sons.

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declare, that in the mean time, and until the canal shares and other property hereinbefore directed to be sold or appropriated and allotted as aforesaid, shall be sold or appropriated and allotted, in pursuance of the trusts or powers aforesaid, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall pay and apply the dividends, interest, rents, issues, profits, and annual produce thereof, or of so much thereof as for the time being shall not have been sold (after payment thereout of all rates, taxes, premiums for insurance against loss by fire, costs of repairs, and other outgoings which any tenant or tenants of the said hereditaments, or of any part thereof, or any other person or persons shall not be liable to pay), to the persons, for the purposes and in the manner to whom and for and in which the interest, dividends, and annual produce of the monies to arise from the sale thereof, or of the stocks, funds, and securities, in or upon which the same monies are hereinbefore directed to be invested, would be payable or applicable under the trusts herein contained, in case the sale and investment aforesaid were then actually made: PROVIDED ALSO, and I hereby declare that the several persons for the time being entitled for life or otherwise to the interest or income of the ultimate residue of my estate shall be considered entitled to such interest and income from the day of my decease (*c*): PROVIDED ALWAYS, and I hereby further declare, that if at any time or times hereafter during my life I shall advance or give to or with any of my said children, any sum or sums of money on his or her marriage or otherwise, for or towards his or her advancement in the world, then and in every such case (unless I shall by some writing under my hand direct the contrary), the sum for the time being advanced or given shall be deemed and taken to be in

unsold or unappropriated property to go as the income of the produce thereof, if sold.

Tenants for life to be entitled to income from the testator's death.

Portions subsequently given by the testator to any of his children to be pro tanto in satisfaction of their shares.

Tenant for life of residue entitled to income from testator's death.

(*c*) The direction in the will as to the income of the residue of a testator's estate seems now to be the law in the absence of direction; but the point has been, and still is, a frequent subject of litigation. (See Williams Law of Executors, Part III. book iii. ch. 4, sect. 4: *Douglas* v. *Congreve*, 1 Keen, 410: *Buxton* v. *Buxton*, 1 C. P. Cooper, 97, 107: *Pickering* v. *Pickering*, 2 Beav. 31; S. C. 4 My. & Cra. 286.)

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satisfaction of the like sum, part of the provision intended to be hereby made in favour of the child to or with whom such sum shall be for the time being advanced or given, or in favour of his or her issue; and as regards every or any sum to be so advanced or given to or with each of my said daughters J. B., K. B., and L. B., such sum shall in the first place be deemed and taken in or towards satisfaction of the legacy of £——, hereby provided for her or her issue as aforesaid. [*Devise and bequest of trust and mortgage estates to the executors, supra, page* 13. *Appointment of guardians of testator's infant daughter L. B. during her minority, supra, page* 14.] AND I HEREBY nominate and appoint the said E. F., G. H., and I. K., executors of this my last will and testament: AND I DO HEREBY FURTHER DECLARE that in respect to any trade or trades, business or businesses in which I may be engaged at the time of my decease, and which I may, by articles of partnership or otherwise, have bound my executors to continue, it shall be lawful for my executors or executor for the time being, acting in the execution of this my will, either to continue the same, or any of them after my decease, for the full period agreed upon, or for a less period, or not to continue the same at all, as such executors or executor, and the partner or partners engaged therein, may at any time or times agree upon: AND I DIRECT my executors and executor, in case of such trade or trades, business or businesses being so continued, to continue the same, and on the same being discontinued, to wind up and close, or dispose of the same, upon such terms as to the employment of my capital therein, and the general management of such trade or trades, business or businesses, during the continuance thereof, and as to the drawing out and the securities for the paying out of the capital at the expiration thereof, and in other respects as may have been agreed upon by the articles of partnership, or agreements or agreement subsisting between me and my partners or partner, or upon such other terms as my executors or executor, and the said partners or partner engaged therein, may at any time or times agree upon: AND I DIRECT my executors or executor forthwith

Usual clauses.

Appointment of executors.

Executors may agree with partners to wind up any business which according to articles ought to be carried on;

and make all arrangements they think fit for continuing or closing such business.

Executors to

OF A TRADER, WITH SPECIAL CLAUSES.

wind up any business the testator may not be bound to carry on;

after my decease, to wind up and close, or dispose of any concern or concerns in which I may be engaged at the time of my decease, and which I may not have bound my executors to continue, upon such terms in every respect as my trustees and executors, or trustee and executor, may think expedient, but without prejudice to the rights and interests of any partner or partners who may be engaged with me therein: PROVIDED ALWAYS, and I hereby further declare, that in order that any trade or trades, business or businesses in which I may be engaged at the time of my decease, and which I either may or may not have bound my executors to continue, may be closed or disposed of to greater advantage, it shall be lawful for my executors or executor, but without prejudice to the rights and interests of any partner or partners who may be engaged with me therein, and so that all my children who may for the time being be living and of age consent thereto in writing (such consent as to each such daughter to be effective, whether covert or sole), to continue every or any such trade or business after the period when my executors or executor are or is hereinbefore directed to close or dispose of the same as aforesaid, for such time or times, and in such manner in all respects as they or he may think expedient, and that either alone or in conjunction with any partner or partners who may be engaged with me therein, or in conjunction with any other person or persons: PROVIDED ALWAYS, and I hereby expressly declare, that for the purpose and in the course of continuing under any of the provisions aforesaid every or any such trade or business as hereinbefore is mentioned, it shall be lawful for my said executors or executor, at any time or times, of their or his proper authority, and at their or his sole discretion, to use and employ any capital which may be employed therein at the time of my decease; and in case such consent of my children as last aforesaid be obtained, then in like manner to use and employ any money part of my general estate over and above such capital, but nevertheless in every case interest at £5 per cent. per annum shall be allowed and paid out of such trade or business half-yearly on the capital or

—but with power for such object, and with certain consents, to carry on such business.

—and to employ the capital already therein and fresh capital from the general estate, paying interest for the same.

money so to be used and employed: PROVIDED ALWAYS, and I hereby expressly declare, that such gains and profits arising from the continuance of every or any trade or business under any of the provisions aforesaid, as shall belong to my estate, over and above the interest of the capital or money employed therein belonging to my estate, shall form part of the capital or principal of my general residuary estate; and any losses to be sustained in the course of continuing the same, and which shall not fall on any partner or partners, or other person or persons who may continue the same with my executors or executor, shall be borne out of the capital or principal of my general residuary estate: PROVIDED ALWAYS, and I hereby expressly declare, that for the purpose and in the course of continuing and winding up respectively of every or any trade or business as aforesaid, and for other purposes relating to my estate, it shall be lawful for my said executors or executor to employ such clerks, travellers, servants, agents, accountants, and other persons at or for such salaries, wages, remuneration or compensation as they or he may deem proper. [*Power to executors to arrange, compound, and compromise, supra, p.* 14]: PROVIDED ALWAYS, and I hereby expressly declare, that the appointment of my said sons —— and —— as executors (*d*), or any of the bequests and dispositions hereby made, is and are not intended to, and shall not extinguish or affect any debts owing, or which may be owing to or from me by or to my same sons, or any of them, or any other of my children, or any other claims which are or may be depending or subsisting between me and my same sons, or any of them, or any other of my children (*e*): AND I EXPRESSLY DECLARE, that as to the execution in all respects of this my will, and of the several trusts and powers herein contained, and in those cases in which I have not already expressed myself to this effect, my trustees or trustee for the time being, and my executors or executor for the time being respectively, shall have the most full and entire discretion, subject (in cases where I have provided that the same shall

OF A TRADER, WITH SPECIAL CLAUSES.

Gains and profits above interest to fall into capital of residue.

Executors may employ clerks, servants, &c.

—and arrange and compromise.

Appointment of executors not to extinguish debts owing by them to testator.

Executors to have unlimited discretion, subject to the consents expressly required.

(*d*) See supra, p. 67, n. (*b*).

(*e*) See supra, p. 47, n. (*a*).

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be obtained) to such consent being obtained as hereinbefore is mentioned. [*Power for the trustees to give receipts, supra, page* 15. *Power to appoint new trustees, supra, pages* 15, 34. *Clauses for the indemnity of trustees, and the payment of their expenses, supra, pages* 17, 18, 35.] IN WITNESS &c.

Usual clauses.

VI.

IN FAVOUR OF THE CHILDREN OF A SON OF THE TESTATOR.

WILL *of* REAL *and* PERSONAL ESTATE. GENERAL DEVISE *and* BEQUEST, *in trust for* SALE, *and for the* INVESTMENT *of the Purchase Money.* DIRECTION *out of the Income of the Investments to pay an* ANNUITY *to the Son of the Testator till he become* BANKRUPT, INSOLVENT, *or* ASSIGN, *and then to his Wife for her separate Use.* TRUSTS *for the* CHILDREN *of the* TESTATOR'S SON, *with Provisions for their Advancement and Maintenance.* PROVISION *for the Application of the* INCOME *during a* SUSPENSE *of* VESTING *of adult Childrens' Shares, and during a suspense of there being Children.* TRUSTS, *on failure of* CHILDREN, *as the* SON *shall* APPOINT, *and, in default of Appointment, for his next of Kin under the Statutes of Distribution.* USUAL CLAUSES.

I, A. B., of &c., do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and declare this to be my last will and testament. [*General devise of real and personal estate in trust for sale, supra, pages* 5—7. *Direction that the monies arising from such sale and the testator's ready money shall be applied in payment of his funeral and testamentary expenses, debts, and legacies, and the residu invested, supra, page* 7.] AND DO AND SHALL, by and out of the interest, dividends, and an-

General devise and bequest for sale, payment of debts, &c., and investment of the residue.

Direction out of the income to pay an an-

IN FAVOUR OF THE CHILDREN OF A SON OF THE TESTATOR.

nual proceeds of the said trust monies, stocks, funds, and securities, pay the annual sum of £——, free from legacy duty and other deductions to my son D. B. during his life, or until he shall be outlawed, or be found and declared bankrupt, or become an insolvent debtor within the meaning of some act of parliament for the relief of insolvent debtors, or shall assign, charge, or incumber the said annual sum or some part thereof, or shall do some act or thing whereby the same or some part thereof might, if the same belonged absolutely to the said D. B., be in some wise charged, assigned, or incumbered, or become vested in or payable to some other person or persons (*a*), the said annual sum of £——, to be paid by equal half-yearly payments, and the first of such payments to be made at the end of six calendar months from my death; AND FROM and after the determination of the trust hereinbefore declared of the said annual sum of £——, do and shall pay the said annual sum of £——, by equal half-yearly payments as aforesaid, to C. B., the wife of the said D. B., if she shall then be living, during her life [*for her separate use, supra, page 57, and infra p.* 84]: AND I DECLARE my will to be, that, subject and without prejudice to the payment of the said annual sum of £——, so long as the same shall continue payable, the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof; IN TRUST for all and every the children and child of my said son D. B., living at my decease or afterwards to be born (*b*), who being a son or sons shall attain the age of twenty-one years, or die under that age, leaving issue living at his or their decease or respective deceases, or born in due time after, or being a daughter or

—annuity to the testator's son till he become bankrupt or assign, &c.;

—and then to the son's wife for her separate use.

—Trust for the son's children, who, being sons, attain twenty-one; or die leaving issue, or being daughters attain twenty-one or marry.

(*a*) With respect to trusts of this nature, see ante, Vol. IV. p. 36, n. (*a*).

(*b*) If there be an immediate gift to children, (*i. e.* a gift to take effect in enjoyment immediately after the testator's death), in the absence of a direction to the contrary, those children only would take who should be in existence at the death of the testator; see the next page, note (*c*).

—Construction of immediate gift to children.

OF A TRADER, WITH SPECIAL CLAUSES.

in the event of her being living at my decease, of and in the said trust-monies shall be held and applied upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, upon, for, with, under, and subject to which the same would, under or by virtue of this my will, have been held and applied, in case such daughter had been living at my decease, and had died immediately after my decease. PROVIDED ALWAYS, and I hereby further declare, that in case any of my said five sons shall die in my lifetime, leaving children, or a child, who shall be living at my decease, or be born afterwards, then and in such case, as well the original as the accruing share or shares hereinbefore, or by this present clause or proviso provided for each such son in the event of his being living at my decease, of and in the said trust-monies, shall be IN TRUST for all and every the children and child of the son so dying who shall be living at my decease or be born afterwards, and who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age, or marry under that age with the consent of her or their guardians or guardian for the time being, if more than one, in equal shares, and if but one such child, in trust for such one child, and with the same powers of investment and varying securities as are hereinbefore contained with regard to the shares of my said daughters. AND IF there be no child of such son so dying as aforesaid, who being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age with such consent as aforesaid, then after such default or failure of issue, as aforesaid, as well the original as the accruing share or shares of such son shall accrue to my other children (sons and daughters) who shall be living at my decease, in equal shares; and the share or shares which shall so accrue as last mentioned to any of my daughters shall be held and applied upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations herein declared, expressed, and contained, of and concerning her or their original share or shares, so far as circumstances will then admit: PRO-

The shares of sons dying in the testator's lifetime, to be in trust for their children.

—and if there be no such children, to accrue to the testator's other children in equal shares.

OF A TRADER, WITH SPECIAL CLAUSES.

VIDED ALWAYS, and I hereby further declare, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times, if they or he shall see fit so to do (but so that in regard to any of the monies in which any of my daughters or their respective husbands may have a prior life or other interest, the same be with her or his consent in writing, while she or he may have such interest, and in respect to such daughter, whether covert or sole, and so that in regard to all the aforesaid monies, the same be subject, and without prejudice to any other prior interest or interests, whether contingent or not), to raise and apply all or any part or parts of the then vested or then presumptive share of any or every child of any of my daughters or sons, of and in any of the monies hereby provided for the children of my sons and daughters, for or towards the respective preferment, advancement, or benefit of such child: PROVIDED ALWAYS, and I hereby further declare, that, during so long as the portion or portions of any child or children of any of my daughters or sons, of and in any of the shares hereby provided for such child or children in the aforesaid trust-monies (including the legacies of £——, hereinbefore bequeathed in trust as aforesaid, in the event of any of my said three youngest daughters dying in my lifetime as aforesaid), shall not be absolutely vested, it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor from time to time (but as to any of the monies in which any of my daughters or their respective husbands may have a prior life or other interest, subject, and without prejudice to such interest or interests, and as to all the aforesaid monies, subject, and without prejudice to any other prior interest or interests, whether contingent or not), to pay and apply all or so much as the said trustees or trustee shall think proper, of the interests, dividends, and annual produce of such share or shares, for or towards the respective maintenance and education of the child or children for the time being entitled thereto, presumptively or in expectancy as aforesaid: AND DO AND SHALL, [*accu-*

Advancement clause as to the children of daughters and sons.

Maintenance clause as to the children of daughters and sons.

Accumulation clause.

OF A TRADER, WITH SPECIAL CLAUSES.

mulation clause, see supra, p. 11.] PROVIDED ALWAYS, and I hereby further declare, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times, with the consent in writing (and as regards any female, whether covert or sole), of the person for the time being beneficially entitled to receive the interest, dividends, or annual produce of any such trust-monies, stocks, funds, or securities as aforesaid, if there shall be any such person, and such person shall be of the age of twenty-one years, but if not, then at the sole discretion of the said trustees or trustee for the time being, to dispose of, call in, and convert into money, the whole or any part of such trust-monies, stocks, funds, and securities, and to lay out and invest the money arising therefrom, or any part thereof, in the purchase of any freehold, copyhold, or customary manors, messuages, lands, tenements, or hereditaments in England or Wales, for any estate of inheritance, or any leasehold messuages, lands, tenements or hereditaments in England or Wales, for any term of years, whereof not less than sixty years shall be to come and unexpired at the time of such purchase, to be conveyed, surrendered, or assigned to them, the said E. F., G. H., and I. K., or the survivors or survivor of them, and their or his heirs, executors, administrators, and assigns, according to the nature of the estate, or interest therein, UPON TRUST, nevertheless, that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, do and shall, with such consent, or at such discretion as last aforesaid, absolutely sell and dispose of the said manors, messuages, lands, tenements, or hereditaments, which shall have been so purchased as aforesaid, either entirely and altogether, or in parcels, and either by public auction or private contract, for such price or prices, and upon such conditions, and with such stipulations as to title or evidence of title, or otherwise, and in such manner in every respect, as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors or administrators of such survivor shall think fit, with full power to buy in the

Power to lay out trust monies in the purchase of land.

—to be held in trust for sale.

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said premises, or any part thereof, at any sale or sales by auction, and to rescind, abandon, or vary any contract for sale, and to resell the premises which shall be so bought in, or the contract for the sale of which shall be so rescinded or abandoned as aforesaid, without being in anywise answerable for any loss which may happen thereby respectively. AND DO AND SHALL stand and be possessed of and interested in, and apply the money arising from any such sale (after payment of the costs, charges, and expenses attending the same), upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, and declarations (including the said power of purchasing freehold, copyhold, and leasehold hereditaments), as the money so raised and laid out in the purchase of such manors, messuages, lands, tenements, or hereditaments was subject to before such purchase was made, or would then have been subject to, if the same had not been laid out therein. AND DO AND SHALL, in the mean time, and until such manors, messuages, lands, tenements, or hereditaments shall be so sold, pay and apply the rents, issues, and profits thereof, (after deducting necessary outgoings), to the persons, for the intents and purposes, and in the manner, to, for, and in which the interest, dividends, and annual produce of the money laid out in the purchase thereof, would have been payable and applicable, under the trusts hereinbefore declared, in case such purchase had not been made, IT BEING my intention that the manors, messuages, lands, tenements, and hereditaments which shall be purchased under this present power, shall, when so purchased, be considered as money, and be subject to such and the same trusts in all respects as the money laid out in the purchase thereof was subject to, before such purchase was made, or would have been subject to, if the same had not been so laid out; AND THAT it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, in the mean time, until the same manors, messuages, lands, tenements, and hereditaments shall be so sold as aforesaid, at their or his discretion, to lease the

—the purchase money to be held upon the trusts of the original trust-monies.

Rents and profits of the lands, till sold, to go as the income of the trust monies,

—and the lands to be held and go as money.

Power of leasing.

OF A TRADER, WITH SPECIAL CLAUSES.

same or any parts thereof, at rack-rent, for any term or terms of years not exceeding twenty-one years, to take effect in possession, and under the usual covenants and conditions on the part of the lessees. AND I EXPRESSLY DECLARE that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, shall in every case have the most full and entire discretion as to the choice of the stocks, funds, and securities, in or upon which the said trust-monies, or any part thereof, may be invested as aforesaid; and as to the exercise or non-exercise of the said power lastly hereinbefore contained, of purchasing lands or other property and the choice of the property which may be so purchased, and in other respects in relation to the provision lastly hereinbefore contained, but so that in the case or cases hereinbefore particularly mentioned, such consent as aforesaid be obtained. PROVIDED ALWAYS, and I hereby expressly declare, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall either forthwith after my decease sell my leasehold houses and canal shares, and other saleable property, or defer so to do, as to the whole or any part thereof, until any future period or periods, as they or he, of their or his proper authority, and at their or his sole discretion, may think most expedient and advantageous under all the circumstances, for the several parties beneficially interested in my estate, without being answerable for any loss, injury, or prejudice which may in consequence thereof be sustained, arise, or happen by or to the parties so beneficially interested, or any of them. PROVIDED ALWAYS, and I hereby expressly declare, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times after my decease, but so that all my children who may for the time being be living and of age, consent thereto in writing (the consent of each daughter for such purpose to be effective, whether covert or sole), instead of selling the same, to appropriate and allot my canal shares, or any of them, or any other part of my property in

Trustees to have the amplest discretion and freedom from liability as to all purchases and investments.

Power to the trustees, with certain consents, to allot and appropriate amongst the legatees, parts of the testator's property in satisfaction of their shares.

or towards satisfaction of the legacies and the shares in my estate hereby bequeathed in favour of my children or their issue and otherwise as aforesaid, or any of such legacies and shares, and every or any such appropriation and allotment, shall take effect from such period or periods, and be made for or in respect of such sum, and in other respects in such manner as may be deemed fair and proper by the said trustees or trustee for the time being, such consent being obtained as aforesaid, and the canal share or shares, or property which may be appropriated and allotted in or towards satisfaction of any legacy or share which, under any of the provisions herein contained, is to remain vested in and be held by the said trustees or trustee for the time being, upon trust as aforesaid, shall remain vested in and be held by the said trustees or trustee for the time being, and the dividends thereof applied upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which, the stocks, funds, and securities hereinbefore authorized to be purchased as aforesaid, by or out of such legacy or share, and the interest, dividends, and annual produce thereof are or is hereinbefore directed to be held and applied, AND WITHOUT meaning to make it obligatory on my said trustees or trustee, or my children, to make such appropriation and allotment, I recommend that in particular such appropriation and allotment of my canal shares, or of part thereof, be made as aforesaid: AND INASMUCH as it may be deemed expedient by my children in general, that one or more of my said sons —— and —— shall have appropriated and allotted to him or them, in or towards satisfaction of his or their share or shares, some part of the said canal shares or other property, I expressly authorize such appropriation and allotment to be made to him or them, with such consent as aforesaid, notwithstanding that such son or sons is or are hereby appointed to act in the execution of this my will (*b*). PROVIDED ALWAYS, and I hereby

Recommendation that certain property shall be so allotted.

Direction that such allotment may be made to the sons who are appointed executors.

Income of the

(*b*) This does not appear from the precedent, as the ordinary initials have been retained for the executors and trustees, instead of the initials of the sons.

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declare, that in the mean time, and until the canal shares and other property hereinbefore directed to be sold or appropriated and allotted as aforesaid, shall be sold or appropriated and allotted, in pursuance of the trusts or powers aforesaid, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall pay and apply the dividends, interest, rents, issues, profits, and annual produce thereof, or of so much thereof as for the time being shall not have been sold (after payment thereout of all rates, taxes, premiums for insurance against loss by fire, costs of repairs, and other outgoings which any tenant or tenants of the said hereditaments, or of any part thereof, or any other person or persons shall not be liable to pay), to the persons, for the purposes and in the manner to whom and for and in which the interest, dividends, and annual produce of the monies to arise from the sale thereof, or of the stocks, funds, and securities, in or upon which the same monies are hereinbefore directed to be invested, would be payable or applicable under the trusts herein contained, in case the sale and investment aforesaid were then actually made: PROVIDED ALSO, and I hereby declare that the several persons for the time being entitled for life or otherwise to the interest or income of the ultimate residue of my estate shall be considered entitled to such interest and income from the day of my decease (*c*): PROVIDED ALWAYS, and I hereby further declare, that if at any time or times hereafter during my life I shall advance or give to or with any of my said children, any sum or sums of money on his or her marriage or otherwise, for or towards his or her advancement in the world, then and in every such case (unless I shall by some writing under my hand direct the contrary), the sum for the time being advanced or given shall be deemed and taken to be in

unsold or unappropriated property to go as the income of the produce thereof, if sold.

Tenants for life to be entitled to income from the testator's death.

Portions subsequently given by the testator to any of his children to be pro tanto in satisfaction of their shares.

Tenant for life of residue entitled to income from testator's death.

(*c*) The direction in the will as to the income of the residue of a testator's estate seems now to be the law in the absence of direction; but the point has been, and still is, a frequent subject of litigation. (See Williams Law of Executors, Part III. book iii. ch. 4, sect. 4: *Douglas* v. *Congreve*, 1 Keen, 410: *Buxton* v. *Buxton*, 1 C. P. Cooper, 97, 107: *Pickering* v. *Pickering*, 2 Beav. 31; S. C. 4 My. & Cra. 286.)

satisfaction of the like sum, part of the provision intended to be hereby made in favour of the child to or with whom such sum shall be for the time being advanced or given, or in favour of his or her issue; and as regards every or any sum to be so advanced or given to or with each of my said daughters J. B., K. B., and L. B., such sum shall in the first place be deemed and taken in or towards satisfaction of the legacy of £——, hereby provided for her or her issue as aforesaid. [*Devise and bequest of trust and mortgage estates to the executors, supra, page* 13. *Appointment of guardians of testator's infant daughter L. B. during her minority, supra, page* 14.] AND I HEREBY nominate and appoint the said E. F., G. H., and I. K., executors of this my last will and testament: AND I DO HEREBY FURTHER DECLARE that in respect to any trade or trades, business or businesses in which I may be engaged at the time of my decease, and which I may, by articles of partnership or otherwise, have bound my executors to continue, it shall be lawful for my executors or executor for the time being, acting in the execution of this my will, either to continue the same, or any of them after my decease, for the full period agreed upon, or for a less period, or not to continue the same at all, as such executors or executor, and the partner or partners engaged therein, may at any time or times agree upon: AND I DIRECT my executors and executor, in case of such trade or trades, business or businesses being so continued, to continue the same, and on the same being discontinued, to wind up and close, or dispose of the same, upon such terms as to the employment of my capital therein, and the general management of such trade or trades, business or businesses, during the continuance thereof, and as to the drawing out and the securities for the paying out of the capital at the expiration thereof, and in other respects as may have been agreed upon by the articles of partnership, or agreements or agreement subsisting between me and my partners or partner, or upon such other terms as my executors or executor, and the said partners or partner engaged therein, may at any time or times agree upon: AND I DIRECT my executors or executor forthwith

OF A TRADER, WITH SPECIAL CLAUSES.

Usual clauses.

Appointment of executors.

Executors may agree with partners to wind up any business which according to articles ought to be carried on;

and make all arrangements they think fit for continuing or closing such business.

Executors to

OF A TRADER, WITH SPECIAL CLAUSES.

after my decease, to wind up and close, or dispose of any concern or concerns in which I may be engaged at the time of my decease, and which I may not have bound my executors to continue, upon such terms in every respect as my trustees and executors, or trustee and executor, may think expedient, but without prejudice to the rights and interests of any partner or partners who may be engaged with me therein: PROVIDED ALWAYS, and I hereby further declare, that in order that any trade or trades, business or businesses in which I may be engaged at the time of my decease, and which I either may or may not have bound my executors to continue, may be closed or disposed of to greater advantage, it shall be lawful for my executors or executor, but without prejudice to the rights and interests of any partner or partners who may be engaged with me therein, and so that all my children who may for the time being be living and of age consent thereto in writing (such consent as to each such daughter to be effective, whether covert or sole), to continue every or any such trade or business after the period when my executors or executor are or is hereinbefore directed to close or dispose of the same as aforesaid, for such time or times, and in such manner in all respects as they or he may think expedient, and that either alone or in conjunction with any partner or partners who may be engaged with me therein, or in conjunction with any other person or persons: PROVIDED ALWAYS, and I hereby expressly declare, that for the purpose and in the course of continuing under any of the provisions aforesaid every or any such trade or business as hereinbefore is mentioned, it shall be lawful for my said executors or executor, at any time or times, of their or his proper authority, and at their or his sole discretion, to use and employ any capital which may be employed therein at the time of my decease; and in case such consent of my children as last aforesaid be obtained, then in like manner to use and employ any money part of my general estate over and above such capital, but nevertheless in every case interest at £5 per cent. per annum shall be allowed and paid out of such trade or business half-yearly on the capital or

wind up any business the testator may not be bound to carry on;

—but with power for such object, and with certain consents, to carry on such business.

—and to employ the capital already therein and fresh capital from the general estate, paying interest for the same.

money so to be used and employed: PROVIDED ALWAYS, and I hereby expressly declare, that such gains and profits arising from the continuance of every or any trade or business under any of the provisions aforesaid, as shall belong to my estate, over and above the interest of the capital or money employed therein belonging to my estate, shall form part of the capital or principal of my general residuary estate; and any losses to be sustained in the course of continuing the same, and which shall not fall on any partner or partners, or other person or persons who may continue the same with my executors or executor, shall be borne out of the capital or principal of my general residuary estate: PROVIDED ALWAYS, and I hereby expressly declare, that for the purpose and in the course of continuing and winding up respectively of every or any trade or business as aforesaid, and for other purposes relating to my estate, it shall be lawful for my said executors or executor to employ such clerks, travellers, servants, agents, accountants, and other persons at or for such salaries, wages, remuneration or compensation as they or he may deem proper. [*Power to executors to arrange, compound, and compromise, supra, p.* 14]: PROVIDED ALWAYS, and I hereby expressly declare, that the appointment of my said sons —— and —— as executors (*d*), or any of the bequests and dispositions hereby made, is and are not intended to, and shall not extinguish or affect any debts owing, or which may be owing to or from me by or to my same sons, or any of them, or any other of my children, or any other claims which are or may be depending or subsisting between me and my same sons, or any of them, or any other of my children (*e*): AND I EXPRESSLY DECLARE, that as to the execution in all respects of this my will, and of the several trusts and powers herein contained, and in those cases in which I have not already expressed myself to this effect, my trustees or trustee for the time being, and my executors or executor for the time being respectively, shall have the most full and entire discretion, subject (in cases where I have provided that the same shall

OF A TRADER, WITH SPECIAL CLAUSES.

Gains and profits above interest to fall into capital of residue.

Executors may employ clerks, servants, &c.

—and arrange and compromise.

Appointment of executors not to extinguish debts owing by them to testator.

Executors to have unlimited discretion, subject to the consents expressly required.

(*d*) See supra, p. 67, n. (*b*).

(*e*) See supra, p. 47, n. (*a*).

DECLARING TRUSTS OF SEVERAL SHARES OF RESIDUE, WITH CROSS TRUSTS.

produce thereof, as shall then be subsisting, undetermined, or capable of taking effect [*similar declarations as to each of the three other fourth shares of this sixth part, by reference to the several trusts of the sixth parts, the trusts whereof are secondly, thirdly, and fourthly after declared*]; AND AS TO ONE other equal sixth part of the said trust monies, stocks, funds, and securities, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall, during the life of my sister E. C., the wife of ——, of &c., pay the interest, dividends, and annual produce thereof to the said E. C. for her sole and separate use, independently and exclusively of the said ——, or of any husband or husbands with whom she may intermarry after his decease, and without being in anywise subject to the debts, control, interference or engagements of the said ——, or any such after-taken husband; but so nevertheless that the said E. C. shall not have the power to deprive herself of the benefit thereof by sale, mortgage, charge, or otherwise in the way of anticipation, and the receipts of the said E. C. (whether covert or sole), to be good and effectual discharges for the same (*b*); AND AFTER the decease of the said E. C., in case she shall leave a husband surviving her, do and shall pay the interest, dividends, and annual produce of the same one equal sixth part of the said trust monies, stocks, funds, and securities unto, or permit the same to be received by, such husband and his assigns during his life;

Similar declarations as to the other three-fourth shares of this sixth part.

Trusts of another sixth part for the separate use of one of the testatrix's married sisters for life.

And for her husband for life, if she leave one;

Trusts for the separate use of married women.

(*b*) See, supra, page 4, n. (*d*), and the late case of *Molony* v. *Kennedy*, 10 Sim. 254. See, too, 1 Jarman on Wills, 818 et seq. A discussion of the cases relating to trusts for the separate use of married women, and the restraint in their power of anticipation, will be found in 1 Jarm. on Wills, 830 et seq. This work—or rather the first volume of it, has been published since the preceding sheets of this part were printed. It will probably, when complete, supersede Powell on Devises by Jarman, referred to supra, p. 1, and elsewhere; but the reader will find little difficulty in referring to the new volume, as its table of contents is clear and full. The references in the following sheets will generally be to the new work, so far as the contents of the volume published will admit.

DECLARING TRUSTS OF SEVERAL SHARES OF RESIDUE, WITH CROSS TRUSTS.

AND AFTER the decease of such husband, or after the decease of the said E. C., in case she shall not leave a husband surviving her, do and shall stand and be possessed of and interested in the same one equal sixth part of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for all and every the children and child of the said E. C., who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, to be divided between or among them, if more than one, in equal shares, and if there shall be but one such child, the whole to be in trust for that one child (*c*); AND IN CASE there shall be no child of the said E. C. who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, do and shall, after the decease of the said E. C., and the decease of the husband (if any) who shall survive her, and such default or failure of children of the said E. C. as aforesaid, which shall last happen, stand and be possessed of and interested in the same one equal sixth part or share of and in the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter expressed and declared or referred to of or concerning the same (that is to say), AS TO ONE equal fourth share of the same, Upon and for such of the trusts, intents, and purposes, and with, under, and subject to such of the powers, provisoes, and declarations hereinbefore declared, either expressly or by reference of or concerning the one equal sixth part, the trusts whereof are hereinbefore declared, for the benefit of the said E. B. during his life, of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, as shall then be subsisting, undetermined, or capable of taking effect; AND AS TO ONE other equal fourth share of the same, upon and for such of the trusts, intents, and purposes, and with, under, and sub-

—and subject thereto for her children attaining twenty-one, or, being daughters, marrying.

—and in default of children attaining vested interests.

As to one fourth share of this sixth part upon the trusts of the sixth part before given to the testatrix's brother for life.

As to another fourth share of this sixth part upon the trusts

(*c*) See, supra, page 83, note (*a*).

DECLARING TRUSTS OF SEVERAL SHARES OF RESIDUE, WITH CROSS TRUSTS.

ject to such of the powers, provisoes, and declarations hereinafter declared, either expressly or by reference of or concerning the one equal sixth part, the trusts whereof are firstly hereinafter declared, of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, as shall then be subsisting, undetermined, or capable of taking effect. [*Similar declarations as to the two other fourth shares of this sixth part, by reference to the several trusts of the sixth parts, the trusts whereof are secondly and thirdly after declared*]; AND AS TO ONE other equal sixth part of the said trust monies, stocks, funds, and securities, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall &c. [*Trusts for the benefit of F. D., another married sister of the testatrix, and her husband and children, as before in the case of E. C., supra, pp. 84, 85, with trusts over (supra p. 85,) on failure of these objects*], AS TO ONE equal fourth share of the same, upon and for such of the trusts, intents, and purposes, and with, under, and subject to such of the powers, provisoes, and declarations hereinbefore declared, either expressly or by reference of or concerning the one equal sixth part, the trusts whereof are hereinbefore declared, for the benefit of the said E. B. during his life, of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, as shall be then subsisting, undetermined, or capable of taking effect. [*Similar declaration as to another fourth share, by reference to the trusts of the sixth part, the trusts whereof are before declared for E. C. for life*]; AND AS TO ONE other equal fourth part of or in the same, upon and for such of the trusts, intents, and purposes, and with, under, and subject to such of the powers, provisoes, and declarations hereinafter declared, either expressly or by reference of or concerning the one equal sixth part, the trusts whereof are firstly hereinafter declared, of the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, as shall then be subsisting, undetermined, or

of the sixth part firstly afterwards mentioned.

Similar declarations as to the two other fourth shares of this sixth part.

Similar trusts of another one-sixth part upon trusts for another married sister of the testatrix, her husband, and children, and in default of children,

as to one-fourth share upon the trusts of the sixth part given to the testatrix's brother for life.

As to the second fourth share upon the trusts of the sixth part given to the testator's first sister for life.

As to the two other fourth shares upon the trusts of the sixth part subsequently mentioned.

capable of taking effect. AND AS TO the remaining equal fourth share &c. [*similar declaration as to this fourth share by reference to the trusts of the sixth part, the trusts whereof are secondly after declared*]; AND AS TO ONE other equal sixth part of the said trust monies, stocks, funds, and securities, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall, during the life of my sister G. B., pay the interest, dividends, and annual produce thereof to the said G. B. for her sole and separate use, independently and exclusively of any husband or husbands with whom she may intermarry, and without being in anywise subject to the debts, control, interference, or engagements of any such husband, but so that the said G. B. shall not have power to deprive herself of the benefit thereof by any disposition thereof by sale, mortgage, charge or otherwise, in the way of anticipation, and the receipts of the said G. B., whether covert or sole, to be good and effectual discharges for the same (*d*); AND AFTER the decease of the said G. B., in case she shall leave a husband surviving, do and shall, &c. [*trusts for the benefit of the husband and children of G. B. as before in the case of E. C., supra, pp.* 84, 85, *with trusts over on failure of these objects, as to the several fourth shares of this sixth part, by reference to the several trusts before declared of the several sixth parts, the trusts whereof are before declared for E. B., E. C., and F. D. respectively for life, and to the trusts of the sixth part, the trusts whereof are subsequently declared, see the forms, supra*]; AND AS TO the remaining sixth part of the said trust monies, stocks, funds, and securities, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall, during the life of my sister H. B., pay &c. [*trusts for the separate use of H. B., and for her husband and children as before in the case of G. B., supra, with trusts over on failure of those objects as to the several fourth shares of this sixth part, by refer-*

DECLARING TRUSTS OF SEVERAL SHARES OF RESIDUE, WITH CROSS TRUSTS.

Similar trusts of another sixth part for an unmarried sister of the testatrix, her husband (if any) and

—with trusts over as before in default of children.

Trusts of the remaining sixth part for another sister, her husband and children, with cross trusts over as before.

(*d*) See, supra, page 84, note (*b*).

DECLARING TRUSTS OF SEVERAL SHARES OF RESIDUE, WITH CROSS TRUSTS.

ence to the several trusts before declared of the several sixth parts, the trusts whereof are before declared for E. B., E. C., F. D., and G. E., respectively, for life]; PROVIDED ALWAYS, and I declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, at any time or times after the decease of any one of them, the said E. B., E. C., F. D., G. B., and H. B., to whom or for whose benefit the interest, dividends, and annual produce of any part or share, or parts or shares of or in the said trust monies, stocks, funds, and securities, would, for the time being, if such person were living, be payable or applicable, during his or her life, under any of the trusts hereinbefore declared; and in the case of the said E. B., after the decease of the widow (if any) of the said E. B., and in the case of any one of them the said E. C., F. D., G. B., and H. B., after the decease of the husband of such person, (such husband having survived her), or in the lifetime of any such person as first aforesaid, with his or her consent in writing, and with the consent in writing of his or her husband (if any), or after the decease of any such person as first aforesaid, and during the lifetime of a surviving widow or husband of such person, with her or his consent in writing, to pay or apply any part or parts not exceeding one moiety of the portion or portions to which any child or children shall or may for the time being be presumptively entitled under any of the trusts hereinbefore declared or referred to, of or concerning such part or share, or parts or shares, of or in the said trust monies, stocks, funds, and securities, for or towards the advancement or preferment in the world or benefit of such child or children respectively, in such manner as to the same trustees or trustee for the time being shall seem expedient.

Advancement clause.

Maintenance clause.

AND I HEREBY FURTHER DECLARE my will to be, that after the decease of any one of them, the said E. B., E. C., F. D., G. B., and H. B., to whom or for whose benefit the interest, dividends, and annual produce of any part or share or parts or shares of or in the said trust monies, stocks, funds, and securities, would for the time being, if

such person were living, be payable or applicable during his or her life under any of the trusts hereinbefore declared; and in the case of the said E. B., after the decease of the widow (if any) of the said E. B., and in the case of any one of them the said E. C., F. D., G. B., and H. B., after the decease of the husband of such person, such husband having survived her, and during the minority or respective minorities of any son or sons of such person, or the minority and discoverture, or respective minorities and discovertures of any daughter or daughters of such person the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall, at their or his discretion, pay and apply for or towards the maintenance or education of such child or children respectively, the whole or such part as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall think fit, of the interest, dividends, and annual produce of the portion or respective portions to which such child or children respectively shall or may for the time being be presumptively entitled, under any of the trusts hereinbefore declared or referred to of or concerning such part or share, or parts or shares of or in the said trust monies, stocks, funds, and securities; AND DO AND SHALL accumulate the surplus or residue (if any), from time to time, of the interest, dividends, and annual produce of such presumptive portion for the time being of each such child under any of the trusts aforesaid, in the way of compound interest, by investing the same &c. [*Accumulation clause, supra, page* 11. *Power of leasing for twenty-one years, supra, page* 12. *Rents and profits of the property till sale and conversion to go as the income of the investments of the purchase money, supra, page* 12. *Devise of trust and mortgage estates, supra, page* 13. *Appointment of executors with power to arrange and compromise, supra, page* 14. *Trustees' receipt clause, supra, page* 15. *Power to appoint new trustees, supra, pp.* 15 *and* 34. *Clauses for the indemnity of the trustees and the payment of their expenses, supra, pages* 17, 18, *and* 35.] IN WITNESS &c.

DECLARING TRUSTS OF SEVERAL SHARES OF RESIDUE, WITH CROSS TRUSTS.

Accumulation clause.

Usual clauses.

VIII.

WITH TRUST FOR ACCUMULATION FOR TWENTY-ONE YEARS.

WILL *of* REAL *and* PERSONAL *Estate.* GENERAL DEVISE *of Real Estate in Fee.* BEQUEST *to Trustees of* STOCKS *and* FUNDS UPON TRUST *out of the Income to pay certain* ANNUITIES *to Females for their* SEPARATE USE, *with restriction on Anticipation,* (SHORT FORM), *and to pay the Residue to Testator's Widow during her Widowhood.* TRUST *for* ACCUMULATION *for a Term of Twenty-one Years from the Testator's Death.* TRUSTS *for the Testator's* SON *and his* CHILDREN, *with powers of Advancement and Maintenance, and* IN DEFAULT *of such* CHILDREN, *for two of the Testator's Brothers, and the Survivor for Life, with an ultimate Trust for the Children of the Testator's Brothers and Sisters.* BEQUEST *of a* LEASEHOLD HOUSE *and* FURNITURE. BEQUEST *of* RESIDUE *of Personal Estate,* SUBJECT *to the payment of* FUNERAL *and* TESTAMENTARY *Expenses and* DEBTS. USUAL CLAUSES.

General devise of real estate to testator's son in fee.

I, A. B., of &c. [*supra, page 2.*] I GIVE AND DEVISE all that piece of inclosed land, situate &c.; And all and every other the messuages, lands, tenements, hereditaments and real estate wheresoever situate, and of what nature or tenure soever, of or to which I am now, or at the time of my death, shall or may be seised or entitled, either at law or in equity, for any devisable estate or interest, or of which I now have power to dispose by this my will (except what I otherwise devise or dispose of by this my will, or any codicil hereto), unto and to the use of my son D. B., his heirs and assigns for ever. I GIVE AND BEQUEATH all and singular the sums which at the time of my death shall belong to me, either in possession, reversion, or otherwise, of or in any of the parliamentary stocks

Bequest to trustees of all the testator's property in the stocks or funds,

or public funds of Great Britain, unto E. F., of &c., G. H., of &c., and I. K., of &c., their executors, administrators, and assigns; UPON TRUST that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, as soon as conveniently may be, after my death, or as circumstances will permit, cause the said stocks or funds to be transferred into their or his names or name; AND DO AND SHALL either permit the said stocks and funds to remain in the state of investment in which they shall be at the time of such transfer, or do and shall at any time or times thereafter, if they or he shall so think fit, (but with the consent in writing of my wife C. B. during her widowhood), sell and dispose of the said stocks and funds, or any part or parts thereof, and lay out the monies arising from such sale or disposition in the purchase, in the names or name of them the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, but not in Ireland (*a*); and do and shall from time to time, if they or he shall so think fit, (but nevertheless with the consent in writing of my said wife during her widowhood), alter, vary, and transpose the said stocks, funds, and securities into or for other stocks, funds, or securities of the same or a like nature (*b*). AND DO AND SHALL, by and out of the dividends, interest, and annual proceeds of the said stocks, funds, and securities, pay the annual sum of £—— to my sister E. C., the wife of M. C., during her life, for her separate use, without power of anticipation (*c*): and the annual sum

WITH TRUST FOR ACCUMULATION FOR TWENTY-ONE YEARS.

Upon trust to cause the same to be transferred into their names,

—with power to vary the investments.

Trust out of the income to pay annuities to females for their separate use, with restraint on anticipation;

(*a*) See ante, vol. 4, p. 312, n. (*e*).

(*b*) As to the trust for varying securities, see supra, p. 9, n. (*k*).

(*c*) There is no doubt that the words in the text are sufficient to create the trust for the separate use, and to affix the restraint on anticipation; ante, vol. 4, p. 316, n. (*g*). *Wardle* v. *Claxton*, 9 Sim. 524. Unless, however, the annuity be very trifling in amount, the more formal and explicit declarations supra, pp. 57, 84, or 87, are to be preferred. See further supra, p. 84, n. (*b*).

Short trust for separate use with restraint on anticipation.

WITH TRUST FOR ACCUMULATION FOR TWENTY-ONE YEARS.

of £—— to my sister F. D., the wife of N. D., during her life for her separate use, without power of anticipation, the said annuities to be paid clear of all deductions except legacy duty (*d*) by equal half yearly payments, on the —— day of——, and the —— day of——, in every year——, and the first half yearly payment thereof respectively to be made on such one of the said days of payment as shall happen next after my death, if the persons respectively to whom the same are respectively given shall then be living; AND DO AND SHALL, during the widowhood of my said wife C. B., pay the residue or surplus of the said dividends, interest, and annual proceeds, unto the said C. B. and her assigns; AND FROM AND AFTER her second marriage or death, which shall first happen, (but subject to the payment of the said annuities), if my said son D. B. shall then be dead, do and shall stand and be possessed of and interested in the said stocks, funds, and securities, and the dividends, interest, and annual proceeds thereof, UPON TRUST for all and every the children and child of my said son D. B. living at my death or afterwards to be born, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, to be divided between or among such children, if more that one, in equal shares; and if there shall be but one such child, the whole to be in trust for such one child (*e*): BUT if my said son shall then be living, do and shall during the residue which shall then be to come of the term of twenty-one years, to be computed from the day of my death, if my said son shall so long live, accumulate the dividends, interest, and annual proceeds of the said stocks, funds, and securities, by investing the same and all the resulting income and produce thereof from time to time in or upon any such stocks, funds, and securities as are hereinbefore mentioned (*f*); AND FROM AND AFTER the

—and to pay the residue to testator's wife during her widowhood:

—and after her death or marriage, if testator's son be then living,

—in trust for all the children of the son who attain twenty-one, or, being daughters, marry;

—but if the son be then living, in trust for the residue then to come of a term of twenty-one years from testator's death, if the son so long live, to accumulate the income;

—and after the

(*d*) See supra, p. 21, n. (*a*).

(*e*) See supra, p. 74, n. (*c*), p. 76, n. (*d*), p. 77 n. (*e*), and the forms to which those notes refer.

(*f*) As to trusts for accumulation, see supra, p. 36, n. (*a*).

WITH TRUST FOR ACCUMULATION FOR TWENTY-ONE YEARS.

expiration of the said term of twenty-one years, do and shall pay the interest, dividends, and annual proceeds as well of the said original stocks, funds, and securities, as of the said accumulations thereof, unto my said son and his assigns during his life. AND FROM AND AFTER the death of my said son, whether the same shall happen during the said term of twenty-one years, or subsequently to the expiration thereof, do and shall stand and be possessed of and interested in all and singular the said stocks, funds, and securities, (including the accumulations aforesaid), and the dividends, interest, and annual proceeds thereof, IN TRUST for all and every the children and child of my said son D. B. living at my death or afterwards to be born, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, to be divided between or among such children, if more than one, in equal shares; and if there shall be but one such child, the whole to be in trust for such one child. PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, their and his assigns, at any time or times after the death or second marriage, whichever shall first happen, of the said C. B. (but subject and without prejudice to the payment of the aforesaid annuities) to levy and raise any part or parts of the then expectant or presumptive or then vested portion or portions of any son or sons of the said D. B., under the trusts hereinbefore declared, not exceeding in the whole for any such son one moiety or equal half part or share of his then expectant, or presumptive, or then vested portion, and to pay and apply the same for his or their preferment, advancement, or benefit, in such manner as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit. AND I DO HEREBY DECLARE my will to be, that (subject to the payment of the aforesaid annuities) the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of

expiration of the term to pay the income to the son for his life: and subject thereto, to hold the capital and income in trust for the children of the son who attain twenty-one, or, being daughters, marry.

Advancement clause.

Maintenance clause.

WITH TRUST FOR ACCUMULATION FOR TWENTY-ONE YEARS.

such survivor, do and shall after the death or second marriage, whichever shall first happen, of the said C. B., and after the death of the said D. B., pay and apply the whole or such part as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall think fit, of the interest, dividends, and annual produce of the portion or respective portions to which any child or children of the said D. B. shall or may for the time being be entitled in expectancy or presumptively, under the trusts hereinbefore declared, for and towards the maintenance and education of such child or children respectively, in the mean time, until such his or their then expectant or presumptive portion or portions shall become payable; AND DO AND SHALL, &c. [*accumulation clause, supra, page* 11.] AND I DO HEREBY DECLARE my will to be, that if there shall be no child of my said son D. B., who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then the said E. F., G. H., and I. K., their executors, administrators, and assigns, do and shall, from and after the second marriage or death, whichever shall first happen, of my said wife, and such default or failure of children as aforesaid, which shall last happen, and subject and without prejudice to the payment of the said annuities, stand and be possessed of and interested in the said stocks, funds, and securities, (including any such accumulations as aforesaid), and the dividends, interest, and annual proceeds thereof, UPON TRUST that they, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall pay the said dividends, interest, and annual proceeds unto my brothers L. B. and W. B. and their assigns during their joint lives, in equal shares, AND FROM and after the death or such one of them my said brothers as shall first die, unto the survivor of them and his assigns during his life, AND FROM and after the death of the survivor of my said brothers do and shall transfer and pay the said stocks, funds, and securities, including accumulations as aforesaid, and the dividends, interest, and annual proceeds

Accumulation clause.

Declaration, that in default of any child of the son becoming entitled, the trustees

—shall pay the income of the trust funds to the testator's two brothers in equal shares for their lives;

—and after the death of one, to the survivor for life:

—and after the death of the survivor, shall pay the capital in equal shares to the children

thereof, unto, between, and among all and every the child and children who at the death of such survivor shall be living of my said brothers L. B. and W. B., and of my brother R. B., and of my said sisters E. C. and F. D., in equal shares as tenants in common if more than one, and if there shall be but one such child living at the death of the survivor of my said brothers L. B. and W. B., the whole to be in trust for that one child. I GIVE AND BEQUEATH my leasehold house, called ——, and all the term and interest which I shall have therein at the time of my death, and all my horses, carriages, plate, linen, china, glass, books, pictures, prints, wines, liquors, and household furniture (*g*), and all dividends due to me, and money at my bankers' at my death, unto my said wife, for her own use and benefit. I GIVE AND BEQUEATH all and singular other the monies, securities for money, goods, chattels, rights, credits, and other personal estate whatsoever and wheresoever, of or to which I am now, or at the time of my death shall or may be possessed or entitled, either at law or in equity, for any estate or interest which can be bequeathed by will, or of which I now have power to dispose by this my will, (except chattels real, included in the general devise hereinbefore contained of real estate, or

WITH TRUST FOR ACCUMULATION FOR TWENTY-ONE YEARS.

then living of the testator's brothers and sisters.

Bequest to testator's wife of a leasehold house, furniture, and other specific chattels.

Bequest to testator's brother of the residue of his personal estate, subject to the payment of the funeral and testamentary expenses and debts.

(*g*) The expression "household furniture" will pass all personal chattels that may contribute to the use or convenience of the householder, as plate, linen, china both useful and ornamental, and pictures. *Kelly* v. *Powlet*, Ambl. 610; *Cole* v. *Fitzgerald*, 1 Sim. & Stu. 189; S. C. 3 Russ. 301; *Paton* v. *Sheppard*, 10 Sim. 186. But goods or plate in the possession of the testator in the way of his trade will not pass. *Le Farrant* v. *Spencer*, 1 Ves. sen. 97: nor books, *Bridgman* v. *Dove*, 3 Atk. 202; *Kelly* v. *Powlet*, ubi supra; *Porter* v. *Tournay*, 3 Ves. 311. It seems a question whether plate not in common use will pass by a bequest of household furniture. *Douglas* v. *Congreve*, 1 Keen, 410.

What passes by a bequest of household furniture.

As to the force and effect of other particular words of description, see Williams on Executors, Part III. book iii. chap. 2, sect. 4. See, too, *Brooke* v. *Turner*, 7 Sim. 671; *Arnold* v. *Arnold*, 2 My. & Ke. 365; *Willis* v. *Curtois*, 1 Beav. 189. A bequest of "books" will in some cases include manuscripts, *Willis* v. *Curtois*. The operation of particular words in passing the general personal estate is discussed 1 Jarm. on Wills, chap. 22. p. 692; and the force and extent of particular words of description is considered in the same work, ch. 2, p. 706.

Force and effect of particular words of description.

WITH TRUST FOR ACCUMULATION FOR TWENTY-ONE YEARS.

specifically devised or bequeathed, and except what else I otherwise bequeath or dispose of by this my will, or any codicil hereto), unto my said brother L. B., subject to the payment out of the said residuary estate of my funeral and testamentary expenses and debts. [*Devise of trust and mortgage estates, supra, page* 18. *Appointment of the trustees to be executors, with powers to arrange, compromise and give receipts, supra, pages* 14 *and* 15. *Power to appoint new trustees, supra, pages* 15 *and* 34. *Clauses for the indemnity of the trustees, and the payment of their expenses, supra, pages* 17, 18, *and* 35.]

Usual clauses.

IN WITNESS.

IX.

OF WEST INDIA ESTATE.

WILL *of* REAL *and* PERSONAL *Estate.* GENERAL DEVISE *and* BEQUEST *of real and personal Estate in* TRUST *for* SALE, *with* TRUSTS *for the* MANAGEMENT *of a* WEST INDIA *estate until sale.* DIRECTION *out of the general income to pay an* ANNUITY *to Testator's* WIFE *for life, subject to* DECREASE *on her* MARRIAGE, *and to pay certain other annuities.* TRUSTS *for* CHILDREN *attaining twenty-one, or being daughters, marrying with consent of Guardians.* SETTLEMENT *of the* SHARES *of* DAUGHTERS *marrying under twenty-one, without the consent of Guardians.* POWER *to* GIVE TIME *for the* PAYMENT *of the* PURCHASE MONEY *of the property sold.* USUAL CLAUSES.

Gift of an immediate legacy to testator's wife.

I, A. B., of &c., [*supra, page* 2]. I GIVE AND BEQUEATH to my wife C. B., the sum of £—— sterling, to be paid to her within one calendar month after my decease (*a*). I

(*a*) See supra, p. 3, notes (*b*) and (*c*).

GIVE AND DEVISE all and every the messuages, plantations, buildings, plantation fixtures, lands, tenements, hereditaments, and real estate in the island of ——, in England, and elsewhere soever, of what nature or tenure whatsoever, of or to which &c. [*General devise of real estate in trust for sale, supra, pp.* 5, 6.] I GIVE AND BEQUEATH all the plantation implements, tools, utensils, stock, money, securities for money, &c. [*General bequest of personalty, in trust for sale, supra, p.* 7. *Declaration of trust of the monies produced by the real and personal estate to pay funeral and testamentary expenses, debts, and legacies, and invest the residue, with power to vary investments, supra, pp.* 7, 8.] AND DO AND SHALL, by and out of the interest, dividends, and annual produce of the said trust-monies, stocks, funds, and securities, pay an annuity or yearly sum of £—— sterling, clear of all deductions whatsoever, to my said wife C. B. and her assigns, so long as she shall continue my widow unmarried, to be paid by equal quarterly payments, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year; and the first quarterly payment thereof to be made on such of the said days of payment as shall first happen after my decease, if my said wife shall be then living, and be my widow and unmarried: AND IF MY SAID WIFE shall marry after my decease, then do and shall, after she shall so marry, by and out of the interest, dividends, and annual produce of the said trust-monies, stocks, funds, and securities, pay an annuity or yearly sum of £—— sterling, clear of all deductions, to my said wife and her assigns, during her life, for her sole and separate use, independently and exclusively of her husband for the time being, and of his debts, control, interference, and engagements, but so nevertheless that my said wife shall not have power to deprive herself of the benefit thereof by sale, mortgage, charge, or otherwise, in the way of anticipation, and the receipts of my said wife shall be good and effectual discharges for the same; the said annuity of £ —— to be paid by equal quarterly payments, on the days hereinbefore appointed for the payment

OF WEST INDIA ESTATE.

General devise of real and personal estate in trust for sale, and declaration of trusts of the purchase-money.

Trust to pay an annuity to testator's wife during widowhood;

—and on her subsequent marriage, to pay her a less annuity during her life for her separate use;

OF WEST INDIA ESTATE.

of the said annuity of £——; and the first quarterly payment of the said annuity of £—— to be made on such of the said days of payment as shall happen next after my said wife shall so marry as aforesaid, if she shall then be living:

—and to pay an annuity to two persons equally during their joint lives, and to the survivor during her life.

AND SUBJECT and without prejudice to the payment of such one of the said annuities or yearly sums of £—— and £——, as shall for the time being be payable, do and shall, by and out of the interest, dividends, and annual produce of the said trust-monies, stocks, funds, and securities, pay an annuity or yearly sum of £—— sterling, clear of all deductions, by equal quarterly payments, on the days hereinbefore appointed for the payment of the said annuity of £——, unto X. Y., of &c., and Y. Z., of &c., during their joint lives, in equal shares; and after the death of either of them to the survivor of them during her life, the first quarterly payment of the said annuity of £—— to be made on such of the said days of payment as shall happen next after my death, if either of them, the said X. Y. and Y. Z., shall then be living.

Declaration that subject to the annuities, the trust funds are to be

AND SUBJECT and without prejudice to the payment of the said annuities of £—— or £—— and £——, do and shall stand and be possessed of and interested in the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof,

—in trust for the testator's children attaining twenty-one, or being daughters, marrying with consent of guardians, with a double share for the eldest son.

IN TRUST for my three children, ——, ——, and ——, and all and every other the child and children of my body living at my decease, or born in due time after, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age, or marry under that age, with the consent of her or their respective guardian or guardians for the time being, if more than one child in equal shares, (save and except that my eldest son, the said —— shall, in case of his attaining the age of twenty-one years, have double the portion of any other child), and if but one such child, the whole to be in trust for such one child.

Advancement clause.

PROVIDED ALWAYS, and I do hereby declare my will to be, that (subject and without prejudice to the payment of the said annuities of £—— or £—— and £——) it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of

such survivor, at any time or times after my death, to levy and raise &c. [*Advancement clause, supra, p.* 10.] AND I DO HEREBY DECLARE my will to be, that (subject and without prejudice to the payment of the said annuities of £——, or £——, and £——) the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall pay and apply the whole &c. [*Maintenance clause, supra, p.* 10. *Accumulation clause, supra, p.* 11.] PROVIDED ALWAYS, and I do hereby declare my will to be, that if any daughter of my body shall marry under the age of twenty-one years, without the consent of her guardian or guardians for the time being, then and in every such case the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, shall stand and be possessed of and interested in the portion to which such daughter, if she had attained the age of twenty-one years without having been married, would have become entitled under the trusts of this my will in the aforesaid trust-monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same, (that is to say), UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall, during the life of each such daughter, &c. [*Trust to pay the income of each daughter's share to her for her life, for her separate use, supra, p.* 57. *On the death of each daughter, the capital of her share to be in trust for her children equally who attain twenty-one, or being daughters marry, supra, p.* 58. *In default of children of any daughter becoming entitled, the share of such daughter to accrue to the other children of the testator in equal shares, supra, p.* 59. *The shares of daughters dying in the testator's lifetime leaving children to be held upon the trusts previously declared for the benefit of such children, supra, p.* 61. *The shares of sons dying in the testator's lifetime to be in trust for*

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Maintenance and accumulation clauses.

Settlement of the shares of daughters marrying under age without consent of guardians.

OF WEST INDIA ESTATE.

their children attaining twenty-one, or, being females, marrying, and in default of such children to accrue to the testator's other children, in equal shares, supra, p. 62; see too infra, pp. 106—109. Advancement, maintenance, and accumulation clauses, supra, p. 63; omitting the reference to the life interests of the daughters' husbands.] PROVIDED ALWAYS, and I do hereby declare my will to be, that it shall be lawful for the said E. F., G. H. and I K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, to postpone the sale of the said plantations, hereditaments, and real estate in the said island of ——, and of the plantation implements, tools, utensils, and stock thereon, so long as it shall appear to my said trustees or trustee for the time being, to be most for the benefit of the persons beneficially entitled under this my will that the same shall remain unsold. AND THAT in the mean time, and until the same premises shall be sold under the trusts aforesaid, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, do and shall manage, cultivate, maintain, and keep up the said plantations and premises in such manner as in their or his opinion will most conduce to the advantage thereof; and in order thereto, do and shall, at their or his discretion, make, or cause to be made, any improvements, repairs, or alterations of any nature or kind whatsoever, in or on the same plantations and premises, or any part or parts thereof, and purchase any cattle, horses, mules, stores, plantation tools, implements, utensils, live and dead stock, or any other articles or things whatsoever, for the use of the same plantations and premises, or any of them: AND DO AND SHALL buy provisions and other necessaries for the labourers, cattle, horses, mules, and other live stock which shall from time to time be in or upon or belonging to the said plantations and premises, and do and shall sell or cause to be sold all or any of such cattle and live or dead stock: AND DO AND SHALL employ any agents, overseers, servants, mechanics, workmen, and other persons whomsoever, in or about the said plantations and premises, or any of them, or any part thereof, and do and shall

Power to the trustees to postpone the sale of the West India property;

—and to manage and cultivate the same till sale;

—and purchase all things necessary for such management.

—and employ agents and servants;

OF WEST INDIA ESTATE.

place and displace the persons so employed, or any of them, in such manner as to them the said trustees or trustee for the time being shall seem meet, and allow them such reasonable salaries or wages as they or he shall think fit: AND DO AND SHALL cause all the sugars, rum, coffee, and other produce of the said plantations, and premises, (except such part of such produce as they or he shall think fit to retain or apply towards payment or discharge of the expenses incurred in the said island), to be shipped and consigned to the port of London, or elsewhere, to be sold or disposed of by such person or persons as the said trustees or trustee for the time being shall direct, and do and shall cause the same to be insured in the usual way.

—and consign produce for sale.

AND I DO HEREBY DECLARE my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, to do, perform, and execute, or cause to be done, performed, and executed, all such acts, deeds, matters, and things whatsoever, as shall to the said trustees or trustee for the time being appear necessary or expedient for the cultivation, management, or improvement of the said plantations and premises, or any of them, and the disposal of the produce thereof, in the same manner, and as fully to all intents and purposes, as if the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, were absolute proprietors of the said plantations and premises, without being responsible for any loss which may be incurred in such cultivation, management, improvement, or disposal.

—And do all other acts in relation to the management, as if absolute proprietors of the property;

AND I DO HEREBY DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall, by and out of the monies which shall come to their or his hands or hand, by means of the rents, issues, produce, and profits of the said plantations and premises, pay and discharge all and singular the rates and taxes payable in respect of the said plantations and premises, and all and singular the costs and charges of managing, culti-

—and out of the produce to pay all outgoings and expenses of cultivation and management, and disposal of the produce.

OF WEST INDIA ESTATE.

vating, improving, and superintending the same, and of putting and keeping in repair all and singular the messuages, boiling-houses, curing-houses, fixtures, machinery, works, and erections whatsoever, in and upon the same, or any of them, and the cost and price of all cattle, mules, horses, plantation tools, implements, utensils, live and dead stock, for the use of the said plantations and premises, or any of them, and of all provisions and other necessaries for such labourers, cattle, mules, horses, and and other live stock as shall from time to time be in, upon, or belonging to the said plantations and premises, or any of them, and all expenses attending the sale or disposal of the said live and dead stock, implements, tools, and utensils, or any of them, and also the reasonable salaries and allowances of all agents, overseers, servants, workmen, and other persons whomsoever, who may be employed for all or any of the purposes aforesaid: and do and shall pay and satisfy the ordinary commission on the sale of the sugar, rum, coffee, and other produce of the said plantations and premises which shall be shipped or consigned as hereinbefore is mentioned, and the premiums and expenses to be paid for insuring such consignments, and the freight and all other expenses attending the consignment and sale thereof, and the usual commission, freight, and other expenses on all supplies whatsoever, which shall from time to time be purchased and sent from Europe for the use or on account of the said plantations and premises, or any of them, and the premiums and expenses to be paid for insuring the same, and also all and singular such losses, damages, charges, and expenses of any kind or nature soever, as they, the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, their or his agents, managers, or servants, either in ——, or Great Britain, or elsewhere, shall or may sustain, incur, or be put unto, in and about the management, cultivation, and improvement of the said plantations and premises, or any of them, or any part thereof, or the disposal of the produce thereof, or in anywise in relation thereto,

Declaration

AND I DECLARE MY WILL TO BE, that the said E. F., G. H.,

and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall pay and apply all the surplus or residue of the monies which shall from time to time come to their or his hands or hand by the ways and means last aforesaid, and also the rents, issues, and profits, interest, dividends, and annual produce of the said other real and personal estate hereinbefore devised and bequeathed in trust for sale, &c. [*Usual direction that the income of the property until sold, shall be applied as the income of the investments of the money to arise from the sale, supra, p.* 13.] AND I DECLARE my will to be, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, to allow such time for the payment of the purchase-monies of the said real and personal estate hereinbefore devised and bequeathed in trust for sale, or of any part thereof, as to them or him shall seem expedient, and either with or without taking security for the same, and to accept any security for the payment thereof by instalments or otherwise, which they or he shall think sufficient or proper (*b*). [*Power of leasing for twenty-one years, supra, p.* 12. *Devise of trust and mortgage estates, supra, p.* 13. *Appointment of guardians, supra, p.* 14. *Appointment of executors with power to arrange and compromise, supra, p.* 14. *Trustees' receipt clause, supra, p.* 15. *Power to appoint new trustees, supra, pp.* 15, 34. *Clauses for the indemnity of trustees and the payment of their expenses, supra, pp.* 17, 18, 35.] IN WITNESS &c.

OF WEST INDIA ESTATE.

that the surplus profits and the income of the other property for the time being unconverted, shall go as the income of the investments of the purchase-monies.

Power to allow time for payment of purchase-monies.

Usual clauses.

(*b*) This provision is inserted with a view to the sale of the West India property. As the trustees have a power to lay out purchase-monies on real securities in England, when selling an estate in England they may of course permit a proper proportion (see ante, Vol. 4, p. 314, note), to remain on the security of the estate sold. But as they have no power to invest any monies coming to their hands on West India securities, they would not be justified in allowing any part of the purchase-money of the West India property to remain on the security of that property without a special authority in the will. The direction in the text is general in its language, to prevent any misconstruction as to the other estate, in consequence of the express mention of the West India estate.

Power of trustees to allow the purchase-monies of real estate to remain on the security of the estate.

X.

WITH SPECIAL TRUSTS OF A HOUSE AND FURNITURE FOR UNMARRIED DAUGHTERS.

WILL *of* REAL *and* PERSONAL *Estate.* DIRECTION *to keep up Testator's* HOUSEKEEPING *for a certain Period.* DEVISE *in fee to* TENANTS *in* COMMON. BEQUEST *of Specific and Pecuniary Legacies to* JOINT TENANTS *and* TENANTS *in* COMMON. DIRECTION *to pay* LEGACY DUTY. TRUSTS *of* RESIDUE *for* CHILDREN *equally, with* HOTCHPOT *Clause as to the previous Devise of real Estate to Two of the Sons.* OPTION *to Sons successively to* PURCHASE *certain* REAL *Estate at a* FIXED PRICE. SETTLEMENT *of* DAUGHTERS' *Shares, with power for them to raise thereout certain Sums for their own Benefit.* SHARES *of* CHILDREN DYING *in Testator's lifetime* WITHOUT ISSUE *to* SINK *into* RESIDUE. INCOME *of a married Daughter's Share to go during her life to the unmarried Daughters.* TRUSTS *of a* HOUSE *and* FURNITURE *for the Benefit of the* UNMARRIED DAUGHTERS *for the time being.* DIRECTION *to make an* INVENTORY *of the Furniture.* POWER *to any* TRUSTEE *to* PURCHASE *the Property for himself at a Public Sale.* USUAL CLAUSES.

Direction that testator's house-keeping and establishment be kept up for a certain period at the expense of his estate.

I, A. B., of &c. [*supra, p.* 2]. I DIRECT that the expenses of maintaining and keeping up the housekeeping and establishment of my house in ——, where I now reside, in the same manner and upon the same scale as I shall have usually maintained and kept up the same (including the payment of the rent of the said house, and all taxes, rates, and outgoings in respect of the same), shall, for six calendar months from my death, be defrayed and paid out of my

general estate (*a*). I GIVE AND DEVISE all and every my messuages, lands, tenements, hereditaments, and real estate, called ——, situate in the parishes of —— and ——, in the county of ——, and all and every other my real estate situate in the same parishes, or either of them, unto my sons D. B. and E. B., their heirs and assigns, in equal shares, as tenants in common. I GIVE AND BEQUEATH the sum of £——, free from legacy duty and all other deductions, to my daughters H. B. and I. B., as joint tenants (*b*). I GIVE AND BEQUEATH all the letters, manuscripts, account books, journals, memoranda, and papers belonging to me at my death, to my said daughters H. B. and I. B., as joint tenants (*c*), but without prejudice to the right of my executors or executor for the time being to retain my ledger accounts to enable them or him to execute this my will, or to perform the trusts thereof, or any of them, for such time as they or he may think fit. I GIVE AND BEQUEATH all the wines and spirituous liquors belonging to me at my death to all such of my children as shall be living at my death, in equal shares as tenants in common, free from legacy duty. [*General devise and bequest of real and personal estate in trust for sale, and trusts of the produce to pay funeral and testamentary expenses and debts, supra, pp.* 5—7]; AND the expenses of maintaining and keeping up the housekeeping and establishment hereinbefore directed to be maintained and kept up in manner aforesaid; AND the legacies bequeathed

WITH SPECIAL TRUSTS OF A HOUSE AND FURNITURE FOR UNMARRIED DAUGHTERS.

Devise of certain real estate to two sons as tenants in common in fee.

Bequest of a legacy to two daughters as joint tenants.

Bequest of manuscript books and papers.

Bequest of wines to testator's children equally.

General devise and bequest in trust for sale, and usual payments;

—and to pay the expenses of the housekeeping directed;

(*a*) The purpose of this direction is obvious—to provide for keeping up an establishment for the testator's unmarried daughters until they get into receipt of the incomes afterwards provided for them. The object might be accomplished by the gift to them of immediate legacies, as in the case of a testator's widow, supra, page 3.

(*b*) The legacy is given to the daughters as joint tenants, in order that if one die in the lifetime of the testator, the survivor may take the whole. *Buffar* v. *Bradford*, 2 Atk. 220: *Dowsett* v. *Sweet*, Ambl. 175: *Morley* v. *Bird*, 3 Ves. 628; Williams on Executors, Part III. book iii. chap. 2, sect. 5. So, too, the survivor will take the whole, if both survive the testator, and one die subsequently, without either having done any act to sever the tenancy. 2 Pow. on Devises, by Jarm. p. 363.

(*c*) See supra, note (*b*).

WITH SPECIAL TRUSTS OF A HOUSE AND FURNITURE FOR UNMARRIED DAUGHTERS.

by this my will, or any codicil hereto, and the legacy duty on the whole of the property bequeathed by this my will, or any codicil hereto on which legacy duty shall be payable (*d*); AND DO AND SHALL pay and divide the surplus or residue of the said monies unto and among my children, D. B., E. B., F. B., G. B., H. B., I. B., K. B., L. B., and M. N., in equal shares; BUT SO NEVERTHELESS, that each of my said sons, D. B. and E. B., shall, in respect of the devise hereinbefore made to them of the —— estate aforesaid, be considered to have received in advance and as part of his share of the said residue the sum of £——, and shall, in the division of the said residue, account for the same accordingly (*e*). [*Trust to invest the daughters' shares and pay the*

—and legacies and legacy duty on the whole estate liable thereto;

—and divide residue among testator's children.

Settlement of

(*d*) See as to legacy duty, supra, p. 21, n. (*a*).

(*e*) As the will in the text was originally drawn, the real estate referred to in the text was included in the general devise, and an option to purchase the same at a fixed price was given to each of the testator's son's successively, according to seniority. By the plan adopted in the will as it now stands, the legacy duty on the value of the estate and the expenses of conveyance are saved. The proviso giving the option to purchase is subjoined.

Power to testator's sons successively, according to seniority, to purchase certain real estate at a fixed price;

PROVIDED ALWAYS, and I declare my will to be, that my said four sons ——, ——, ——, and ——, successively, according to their respective seniorities, shall have the option of taking my said hereditaments and estate called ——, in the county of ——, such option to be declared in writing by my said eldest son within one calendar month from my death, and by each of my said other sons within one calendar month from the time when the period allowed to the son next preceding him in seniority shall have expired, or such son shall have declared in writing his intention not to take the said estate. And I direct that the trustees or trustee for the time being of this my will, shall convey and assure the said estate to the son who shall so take the same, and his heirs, or as he or they shall direct. PROVIDED NEVERTHELESS, and I declare my will to be, that the son so taking the said estate of ——, shall accept the same with the timber thereon, as part of

—to be brought into hotchpot in the division of general estate.

income during their lives for their separate use, without power of anticipation, supra, p. 57]. AND FROM AND AFTER the death of each such daughter, or in case any of my said daughters shall have died in my lifetime, leaving a child or children living at my death, as to the share of each daughter so dying from and after my death (*f*), do and shall stand and be possessed of and interested in the share hereinbefore expressed to be given to her of the monies aforesaid, and of

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daughters' shares for their lives for their separate use; —and after their deaths, or the death of the testator in the case of daughters who die in his lifetime,

his share of my general residuary estate, at the value of £ ——, and shall account for the same accordingly; and that in case any son shall elect to take the said estate, the rents and profits of the said estate from the day of my death shall belong to and be received by such son, his heirs, or assigns.

(*f*) By the statute 1 Vict. c. 26, sect. 33, it is enacted "That where any person being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest, not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will." And as in this will, the residue is bequeathed to all the testator's children named, and not to such of them only as shall be living at his death (as in the forms, supra, pp. 9, 57), it follows that the share of a son or a daughter dying in the testator's lifetime, leaving issue, will not lapse, but will fall into and form part of his or her personal estate. This meets the testator's intention in the case of a son; but to carry out that intention in the case of a daughter, it is necessary to include the shares of daughters so dying in the settlement made by the will of their respective shares. This is accomplished by the expression in the text.

Disposition by statute of the shares of children dying in the testator's lifetime, leaving issue living at the testator's death;

—modified in the case of daughters by the will.

By a subsequent clause (infra, p. 109), it is provided that the shares of sons or daughters dying in the testator's lifetime, without leaving issue living at his death, shall sink into the residue, so that the effect of this will is the same as of that given in Precedent V., supra, p. 54, (see p. 57, et seq.) where the original trust is for such of the testator's children as shall be living at his death, and the provisoes following meet the case of those children who die in the testator's lifetime leaving issue.

Proviso as to the shares of children dying in testator's lifetime without leaving such issue.

It is to be observed, that the above-cited provision of the statute applies only to gifts to a child, or other issue of the testator himself.

Statute applies only to issue of the testator.

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and in the stocks, funds, and securities, in or upon which the same may be invested, and the interest, dividends, and annual produce thereof, IN TRUST for all and every the children and child of such daughter, who, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age, or marry under that age, with the consent of her or their guardian or guardians for the time being, if more than one, in equal shares, and if there shall be but one such child, the whole to be in trust for such one child; AND I HEREBY FURTHER DECLARE my will to be, in the case of any daughter, whether surviving me or dying in my lifetime leaving issue living at my death, that if there shall be no child of such daughter, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age, or marry under that age with such consent as aforesaid, then, after the death of such daughter, and such default or failure of her issue as aforesaid, which shall last happen, the said trustees or trustee for the time being of this my will, do and shall stand and be possessed of and interested in the share of such daughter in the aforesaid trust-monies, and in the stocks, funds, and securities, in or upon which the same share may be laid out or invested, and of and in the interest, dividends, and annual produce thereof, UPON AND FOR such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as such daughter, whether covert or sole, by her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, shall direct or appoint; AND THAT in default of such direction or appointment, and so far as no such direction or appointment shall extend, as well the original share of such daughter, as any share or shares which may accrue to her under this present provision, shall accrue and go in equal shares to my other children (sons and daughters) who shall then be living, or shall have previously died, leaving issue who shall be then living, but so nevertheless that the share or shares which shall so accrue to any of my said daughters shall be held upon

In trust for their children attaining twenty-one, or being daughters, marrying with consent.

In default of any such child

—as the daughters shall appoint;

—and in default of appointment, to accrue to the testator's other children then living, or then dead, leaving issue then living.

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and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinbefore declared, expressed, and contained of and concerning their original shares, or as near thereto as circumstances will then admit. PROVIDED ALWAYS, and I hereby declare my will to be, that if any of my said sons or daughters shall die in my lifetime, without leaving issue who shall be living at my death, the share hereinbefore given to each son so dying, in the said surplus or residuary monies, and the share hereinbefore provided in the same surplus or residuary monies for each daughter so dying, and her children, and otherwise as aforesaid, shall not lapse, but shall sink into and form part of the same surplus or residuary monies, in the same manner as if the same share had never been so given or provided, and the name of the said son or daughter had accordingly been omitted in the gift and disposition and trusts hereinbefore contained of the same surplus or residuary monies (*g*) [*Powers of advancement, maintenance, and accumulation, in regard to the children of the daughters, supra, p. 63, omitting the expressions as to the prior life interests of husbands, and other expressions which do not apply.*] PROVIDED ALWAYS, and and I do hereby declare my will to be, that notwithstanding the trusts hereinbefore declared concerning the share hereinbefore expressed to be provided for each of my said daughters and her children, or otherwise as aforesaid, of and in the said surplus or residuary monies, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, at the request of any of my said daughters, whether covert or sole, (other than my said daughter, M. N.), to be signified by writing under her hand, (but during the lives of the said M. N. and her husband, and of the survivor of them, with their, her, or his consent in writing), levy and raise out of the said share of the daughter by whom such request shall be made, or out of the stocks, funds, or securities in or upon which the same share may be laid out or

Shares of sons or daughters dying in the testator's lifetime, without leaving issue living at his death, to sink into residue.

Power to each unmarried daughter, with certain consents to raise a sum out of her share.

(*g*) See supra, p. 107, n. (*f*).

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invested, any sum or sums of money not exceeding in the whole the sum of £ ——, and pay the same to such person or persons, and for such intents and purposes, and in such manner as such daughter shall (whether covert or sole), by any writing under her hand, order or direct; and in default of any such order or direction, into the proper hands of such daughter for her absolute use and benefit and her receipts, (whether covert or sole), or the receipts of her appointees, shall be good and sufficient discharges for the same. PROVIDED ALWAYS, and I do hereby declare my will to be, that during such time as my daughter the said M. N. shall live, and any one or more of my said daughters H. B., I. B., K. B., and L. B. shall live a spinster or spinsters, the said trustees or trustee for the time being of this my will do and shall pay the interest, dividends, and annual produce of the share hereinbefore given to the said M. N. in the surplus or residuary monies aforesaid, and of the stocks, funds, and securities in or upon which such share may be laid out or invested, unto, among, or between such one or more of them, the said H. B., I. B., K. B. and L. B. as shall for the time being be living a spinster or spinsters, if more than one, to be divided among or between them in equal shares. [*Power, instead of selling, to allot and appropriate in satisfaction of the shares of residue certain stocks and shares,* "and any other part of my personal estate which may at my death be invested upon any security or securites whatsoever," *supra, p.* 66]. PROVIDED ALWAYS, and I hereby declare my will to be, that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall not and may not sell or dispose of the said house at ——, wherein I now reside, or the garden and appurtenances therewith held or occupied, or the books, pictures, plate, linen, china, glass, household goods or furniture, which shall be in or about or belonging to the same at my death, or any of them, so long as any one or more of my said daughters, H. B., I. B., K. B., and L. B. shall be living a spinster or spinsters, unless such sale shall be made by the direction or with the consent of my said

Direction that the income of the married daughter's share be paid during her life to her unmarried sisters for the time being.

Power to allot and appropriate the testator's property in specie.

Proviso that the testator's dwelling-house and furniture shall not be sold (except by consent) so long as any of his daughters live unmarried;

daughters, H. B. and I. B., they being then both living spinsters, or of such one of them as shall for the time being be living a spinster, or after the death or marriage of both of them, the said H. B. and I. B., by the direction or with the consent of my said other daughters or daughter who shall for the time being be living spinsters or a spinster; AND THAT in the mean time, and until the said last-mentioned messuage and premises shall be sold or disposed of, the said trustees or trustee for the time being of this my will do and shall permit and suffer all and every or such one or more of my said daughters, H. B., I. B., K. B., and L. B., as shall for the time being be living spinsters or a spinster, to reside in and occupy and enjoy the said messuage, garden, and appurtenances, books, pictures, plate, linen, china, glass, household goods, and furniture they or she at their or her own cost, keeping the same in good repair and condition, (reasonable wear and tear as to the said personal chattels excepted), and adequately insured against loss or damage by fire, and paying the ground-rent, taxes, and outgoings payable in respect of the said messuage and appurtenances, and observing and performing the covenants contained in the lease thereof, and on the part of the lessee to be observed and performed; OR DO AND SHALL, by the direction or with the consent of the said H. B. and I. B., they being then unmarried spinsters, or of such one of them as shall for the time being be living an unmarried spinster, or after the death or marriage of both of them, the said H. B. and I. B., by the direction or with the consent of my said other daughters or daughter who shall for the time being be living spinsters or a spinster, let the said messuage, garden, and appurtenances for such term or terms of years, at such rent or rents, and upon such conditions in every respect as the said trustees or trustee for the time being of this my will shall think fit; and do and shall pay the net rents and profits to be received from the same premises unto, among, and between all and every or such one or more of them my said daughters, H. B., I. B., K. B., and L. B., as shall for the time being be living spinsters or a spinster, if more than one, to be

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—and shall be occupied by such daughters for the time being;

—but that the same with consent may be let and the rent paid to such daughters;

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divided between or among them in equal shares; AND I HEREBY FURTHER DECLARE my will to be, that if the same messuage shall be let in pursuance of the trust aforesaid, then the said books, pictures, plate, linen, china, glass, household goods, and furniture bequeathed therewith as aforesaid, shall be forthwith sold in pursuance of the trust for sale hereinbefore contained. AND I HEREBY FURTHER DECLARE my will to be, that if the same messuage, garden, and appurtenances, books, pictures, plate, linen, china, glass, household goods, and furniture, or any of the same premises, shall be sold while any one or more of my said daughters, H. B., I. B., K. B., and L. B., shall be living a spinster or spinsters, the interests, dividends, and annual produce of the net monies to arise from any such sale or sales, or of the stocks, funds, or securities in or upon which such monies may be laid out or invested in pursuance of the trust in that behalf hereinbefore contained, shall, so long as any one or more of them, the said H. B., I. B., K. B. and L. B., shall be living a spinster or spinsters, be paid to, between, or among such one or more of them as shall for the time being be living a spinster or spinsters, if more than one, to be divided between or among them in equal shares. AND I DIRECT, that as soon as conveniently may be after my death, an inventory shall be made of the said books, pictures, plate, linen, china, glass, household goods, and furniture, which shall be in or about or belonging to the said messuage at —— at my death, and that two copies shall be made of such inventory, and that each of them shall be signed by the trustees or trustee for the time being of this my will, and by such one or more of my aforesaid daughters, H. B., I. B., K. B., and L. B., as shall for the time being be living a spinster or spinsters; AND THAT the said trustees or trustee for the time being shall see that the said books, pictures, plate, linen, china, glass, household goods, and furniture are properly preserved, (reasonable wear and tear excepted), and insured against damage by fire, at the expense of the usufructuary or usufructuaries thereof for the time being. [*Power of leasing, supra, p.* 12. *Rents and profits till sale, to go as the income of the investments,*

—but if the house be let, the furniture to be sold.

If the house or furniture be sold, the unmarried daughters for the time being to be entitled to the income of the produce.

Direction to make an inventory of the furniture;

—and to see to the preservation and insurance thereof.

Usual clauses.

supra, p. 12.] AND I HEREBY DECLARE my will to be, that it shall be lawful for my said sons, D. B., E. B., and F. B., or any of them, to become the purchasers or purchaser of any part or parts of the real and personal estate hereinbefore devised and bequeathed in trust for sale at any public sale or sales thereof (*h*). [*Devise of trust and mortgage estates, supra, p.* 13. *Appointment of executors, with power to arrange, supra, p.* 14. *Trustees' receipt clause, supra, p.* 15. *Power to appoint new trustees, supra, pp.* 15, 34. *Clauses for the indemnity of trustees and the payment of their expenses, supra, pp.* 17, 18, 35.] IN WITNESS &c.

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Power to sons who are trustees, to purchase at public sales.

XI.

WILL *of* REAL *and* PERSONAL *Estate.* BEQUEST *of* CHATTELS *in a House.* BEQUEST *of* PLATE *for* LIFE, *with Gift over.* DEVISE *of* COPYHOLDS *for* SALE. BEQUEST *of certain* DEBTS *owing to the Testator, for the Benefit of a* LUNATIC SON, *his Wife and Children, if any.* PROVISO *against the Effect of* ADEMPTION. DIRECTION *to pay* PREMIUMS *on a* POLICY *of Assurance and several Annuities, including an* ANNUITY *for the maintenance of a* LUNATIC DAUGHTER; *such Annuity to be paid to and applied by the Testator's Wife during her Life.* GENERAL DEVISE *of* REAL *Estate in Trust to make up the* ANNUITIES, *if the* PERSONALTY *be* DEFICIENT, *and subject thereto for the* WIFE *for* LIFE, *and after her* DEATH *in Trust for* SALE. DIRECTION *that* WIFE *shall have the* USE *of Testator's* RESIDENCE. POWER *to* SELL *or* MORTGAGE *Real Estate in* WIFE'S LIFETIME,

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(*h*) These sons were the trustees, and trustees cannot without special authority purchase any part of the trust property. 3 Sugd. Vend. & Purch., p. 224. 10th Edit.

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for certain Purposes, with Clauses in EXONERATION *of* PURCHASERS *and* MORTGAGEES. HOTCHPOT *Clause as to certain* SONS *who have been* ADVANCED. POWER *to* ALLOT *and* APPROPRIATE *Real and Personal Estate in respect of Shares of Residue.* USUAL CLAUSES.

Bequest of all effects in dwelling-house, except money, or curities for money, and plate.

I, A. B., of &c. [*supra page* 2]. I GIVE AND BEQUEATH all and singular the books, pictures, linen, china, wines, liquors, provisions, household goods and furniture (*a*), chattels and effects whatsoever (other than plate, money, or securities for money (*b*)) which at my death shall be in or about the house at ——, in which I now reside, unto my wife C. B., for her own use and benefit (*c*). I GIVE AND BEQUEATH all my plate to my sons D. B. and E. B., their executors, administrators, and assigns, UPON TRUST that they the said D. B. and E. B., and the survivor of them, and the executors or administrators of such survivor, do and shall, as soon as conveniently may be after my death, cause an inventory to be made and taken of the said plate, and two copies to be made of the same and each of them, to be signed by my said wife, C. B., and by the said D. B. and E. B., or the survivor of them, or the executors or administrators of such survivor; AND DO AND SHALL permit the said plate to be used and enjoyed by my said wife during her life, AND FROM AND AFTER the death of my said wife, do and shall stand and be possessed of and interested in the said plate in trust for my three sons, the said D. B. and E. B., and F. B. in equal shares (*d*). AND I HEREBY GIVE

Bequest of plate to two sons, In trust to make an inventory thereof;

—and allow testator's wife to use the same during her life, and after her death hold the same in trust for themselves and another son.

(*a*) As to what passes by a bequest of household furniture, and by other particular words of description, see supra, p. 95, n. (*g*).

Money, but not securities, passes by a bequest of all chattels in a particular place.

(*b*) By a general bequest of all chattels at a particular place (as in a particular house), ready money, whether in Bank of England notes or coin, will pass, but not bonds, promissory notes, or other securities for money. Williams on Executors, Part III. book iii. chap. 2, sect. 4. *Brooke* v. *Turner*, 7 Sim. 671; *Willis* v. *Curtois*, 1 Beav. 189. As to a bequest of all a testator's property in England, see *Arnold* v. *Arnold*, 2 My. & Ke. 365.

(*c*) As to the ademption of specific legacies by removal, see supra, p. 3, n. (*a*).

(*d*) See the more complex trusts of plate and other articles devised in settlement, infra Precedents XII. and XIII.

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AND DEVISE all and singular the copyhold messuages, lands, and hereditaments, situate in and holden of the manor of ——, and of or to which I am now or at the time of my death shall or may be seised or entitled, either at law or in equity, for any devisable estate or interest, or which I now have any power to dispose of by this my will (except what I otherwise devise or dispose of by this my will or any codicil hereto), TO SUCH USES, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as E. F., of &c., G. H., of &c., and I. K., of &c., or the survivors or survivor of them, or the executors or administrators of such survivor, shall, by any deed or deeds, limit, direct, or appoint; AND IN DEFAULT of and until such limitation, direction, or appointment, and so far as no such limitation, direction, or appointment shall extend, TO THE USE of the said E. F., G. H., and I. K., their heirs and assigns, according to the custom of the said manor, and at and under the rents, heriots, fines, suits, and services therefore due and of right accustomed (*e*); AND I HEREBY DECLARE my will to be, that the power of appointment hereinbefore limited to the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, and the estate hereinbefore devised to them, their heirs and assigns, in default of such appointment, are so limited and devised, UPON TRUST that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators (as the case may be) of such survivor, do and shall, so soon as conveniently may be after my death, absolutely sell and dispose of &c.; [*General trust for sale, supra, p.* 6]; AND DO AND SHALL stand and be possessed of and interested in the money to arise or be produced from such sale or sales, after deducting therefrom the expenses attendant upon or incident to such sale or sales, and all such other expenses

Devise of copyholds;

— to such uses as trustees shall appoint;

—and in default of appointment, to the use of the trustees in fee;

In trust for sale.

Trusts of the purchase-money.

(*e*) By giving the trustees a power of appointment over the copyholds, they are enabled (if they sell before the third court after the testator's death) to convey to a purchaser by appointment, without the expense of being themselves admitted, and surrendering to the purchaser. See ante, Vol. 3, p. 320. n. (*c*).

Mode of devising copyholds in trust for sale.

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as shall be incurred in relation to the said copyhold premises, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same. AND WHEREAS my son, G. B., is indebted to me in several sums of money, amounting in the whole to the sum of £——. NOW I HEREBY GIVE AND BEQUEATH the said debts or sums, and the securities for the same, and all interest which may be owing thereon at the time of my death, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall, at their or his discretion, either permit and suffer the said debts and sums of money, or any of them, or any part thereof respectively, to remain on the present securities for the same, so long as they or he shall, in their or his discretion think fit, OR DO AND SHALL call in and compel payment of and receive the same debts and sums of money, or any of them, or any part thereof respectively, and lay out and invest the monies to arise by such calling in and compelling payment, in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, (but not in Ireland), with full power to alter, vary, and transpose the said stocks, funds, and securities, into or for others of the same or a like nature, at their or his discretion; AND DO AND SHALL, during the life of my said son, G. B., pay and apply the interest, dividends, and annual produce of the said debts or sums of money, and of the stocks, funds, or securities in or upon which the same, or any part thereof, may be laid out or invested for the benefit, maintenance, and support of the said G. B., in such manner as the said trustees or trustee for the time being shall, in their or his discretion think fit, MY INTENT and meaning being, that the said trustees or trustee should have an absolute discretion either to apply the same interest, dividends, and annual produce, or any part thereof,

Recital of a debt owing to testator by one of his sons.

Bequest of the same to trustees,

In trust to allow the same to remain on the present securities;

— or to call in and invest the same in ordinary securities;

— and during the life of the son to pay the income for his benefit, either immediately or through the intervention of the son's wife.

immediately for the purposes aforesaid, or to pay the same, or any part thereof, into the hands of the present wife of the said G. B., to be by her applied for his benefit, maintenance, and support (*f*): AND FROM and after the death of the said G. B., do and shall pay the said interest, dividends, and annual produce to his present wife, if she shall survive him, until her death or second marriage, which shall first happen: AND I HEREBY DECLARE my will to be, that from and after the determination of the trusts aforesaid, the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said debts and sums of money, and the stocks, funds, and securities, in or upon which the same, or any part thereof, may be laid out or invested, and the interest, dividends and annual produce thereof, IN TRUST for all and every the child and children of the said G. B., who, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, if more than one, in equal shares, and if but one, the whole to be in trust for such one child (*g*). AND I DECLARE that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, shall have an absolute discretion as to the application of the said trust-monies, stocks, funds, and securities, interest, dividends, and annual produce, and every or any part thereof respectively,

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— and after his death to his wife during widowhood;

—and subject thereto,

In trust for the son's children attaining 21, or being daughters marrying.

Powers of advancement, maintenance, and education.

(*f*) The trust in the text is intended for the benefit of a lunatic. If the lunatic, however, should become sane, he might probably put an end to the trust, and insist on the income of the trust fund being paid to himself or his assignee; and it is apprehended that the discretion of the trustees, as to the application of the income, would cease on the bankruptcy or insolvency of the cestui que trust. See ante, Vol. 4, p. 367, n. (*a*). See too *Rippon* v. *Norton*, 2 Beav. 63.

Operation of a direction that trustees shall apply the income at their discretion, for the benefit of a legatee.

See the trusts declared of a debt for the benefit of the debtor and his children, and which are better adapted to ordinary circumstances, supra, pp. 22—26. In the case in the text, it should be observed, that the debt was engaged in a business in which the lunatic was a partner, and consequently produced an income not payable by the lunatic himself.

Trusts of a debt for the benefit of the debtor and his children.

(*g*) See supra, p. 74, n. (*c*); p. 76, n. (*d*); and p. 77, n. (*e*); and the forms to which these notes refer.

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for or towards the advancement, maintenance, or education of the children for the time being presumptively, or in expectancy, entitled thereto, or any of them; AND IF THERE shall be no child of the said G. B., who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then I declare my will to be, that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or of or in such parts thereof respectively, as shall not have been applied for advancement, maintenance, or education, in trust to allow the same to fall into and form part of my general personal estate: AND IN CASE the said debts or sums, or any part thereof, shall be paid off by my said son, G. B., in my lifetime, then and in such case I give to the said E. F., G. H., and I. K., their executors, administrators, and assigns, if the whole of the said debts or sums shall be paid off, the sum of £——, [*the total amount of the debts*], and if part only of the said debts or sums shall be paid off, such sum of money as, together with so much as shall at my death remain unpaid of the said debts or sums, shall amount to or make up the sum of £——: AND I DECLARE that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sum of £——, so last hereinbefore bequeathed, or so made up as aforesaid, upon and for the trusts, intents, and purposes, and with the powers upon, for, and with which the said sums now due and owing from my said son, G. B., will be held under this my will, in case the same continue owing at my death, or such of the same trusts, intents, purposes, and powers, as shall be applicable, to the intent that the sum of £—— may be held and applied upon the trusts hereinbefore declared of that sum, notwithstanding any ademption by reason of payment or reduction in my lifetime, of all or any part of the debt owing from my said son, G. B. (*h*). [*General*

In default of children entitled the funds to fall into the general personal estate.

Provision in case of the debts being paid off in testator's lifetime,

—so as to prevent the effect of the ademption.

Ademption by

(*h*) The two preceding clauses are intended to guard against the di-

bequest of personalty in trust for conversion, supra, p. 7.] AND I DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, shall stand and be possessed of and interested in all the money to arise or be produced from that part of my personal estate which I have directed to be called in and converted into money, and of and in the ready money of or to which I shall be possessed or entitled at the time of my death, and also of and in the net monies to arise or be produced from the sale of the said copyhold hereditaments and premises hereinbefore directed to be sold, and of and in the principal monies so due and owing from the said G. B. as aforesaid, and the stocks, funds, and securities in or upon which the same may be laid out or invested as aforesaid, and the interest, dividends, and annual produce thereof (subject nevertheless and without prejudice to the trusts hereinbefore declared of the said last-mentioned premises, for the benefit of the said G. B., and his wife and children), UPON TRUST &c. [*to pay funeral and testamentary expenses, debts, and legacies, and invest residue, supra, p. 8*]: AND DO AND SHALL by and out of the interest, dividends, and annual produce of the said trust-monies, stocks, funds, and securities, in the first place pay all and every the premiums and other sums of money which shall become payable for keeping on foot the said policy of assurance on the life of the said —— (*i*); AND IN THE

WITH POWER TO SELL COPYHOLDS, AND OTHER SPECIAL CLAUSES.

Trusts of money arising from personal estate, and from the sale of the copyholds, empowered to be sold;

—to pay debts, &c., and invest the residue:

—and out of the income to pay the premiums on a policy of assurance;

—and an annuity to the

minution or extinguishment of the legacy, by the debt, or part of it, being paid in the testator's lifetime. For if a debt specifically bequeathed, or part of it, be received by the testator, the legacy is adeemed wholly, or pro tanto, as the case may be. Williams' Law of Executors, Part III. book iii. chap. 3, sect. 1: *Gardner* v. *Hatton*, 6 Sim. 93.

payment of a debt specifically bequeathed.

(*i*) In the case in the text, the testator was bound to keep up the policy of insurance; but if he had been absolutely entitled to the policy, and intended it to have been kept up, the will should have contained an express direction to that effect. In the absence of any direction to keep up a policy of life assurance, the executors would, it is apprehended, be bound under the general trust for sale to sell it immediately after the testator's death. But it is obviously expedient in most cases, that a power should be given to the executors either to keep up, or immediately, or at any time, to sell policies to which the testator may be entitled. In case,

Trusts to be declared in a will of a policy of life assurance, with a view to selling or keeping up the same.

WITH POWER TO SELL COPYHOLDS, AND OTHER SPECIAL CLAUSES.

NEXT PLACE, pay an annual sum of £—— to my said wife C. B. during her life, in preference and priority to the several other annuities and legacies hereinafter directed to be paid, the said annual sum of £——, to be paid clear of all deductions, by equal quarterly payments, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December in every year, and the first of such quarterly payments to be made on such of the said days of payment as shall happen next after my death, if my said wife shall be then living; AND IN THE NEXT PLACE, pay the annual sum of £—— to my said wife during the said joint lives of herself and my daughter, H. B., to be applied and disposed of by my said wife at her own discretion, for the maintenance and support (*k*) of my said daughter, H. B., the said annual sum of £—— to be paid clear of all deductions, except legacy duty (*l*), by equal quarterly payments, on the days hereinbefore appointed for the payment of the said annual sum of £——, and the first of the said quarterly payments of the said annual sum of £—— to be made on such of the said days of payment as shall happen next after my death, if my said wife and my said daughter, H. B., shall both then be living (*m*); AND I HEREBY DECLARE that the receipts of my said wife shall be good discharges for the said annual sum of £——, and that my trustees or trustee for the time being shall have no concern as to the application or non-application thereof, the receipts of my said wife being hereby declared to be from time to time good and sufficient discharges for the same: AND IN THE NEXT PLACE, &c. [*Trusts to pay other daughters certain annuities during the joint lives of the wife and each such daughter*, "the said three annual sums of £—— to be paid pari passu and

testator's wife for life, in preference to other annuities;

—and an annuity to the wife during the joint lives of herself and one of her daughters, for the maintenance of such daughter,

—for which the wife's receipts are to be discharges:

—and annuities to other daughters during the joint lives of themselves and the mother;

too, of a testator's possessing any other reversionary or contingent property, authority should be given to the executors to postpone the sale thereof till it falls into possession.

(*k*) The cestui que trust was in this case a lunatic; see supra, p. 117, n. (*f*).

(*l*) As to exemption from legacy duty, see supra, p. 21, n. (*a*).

(*m*) As to the time of payment of annuities, see supra, p. 28, n. (*i*).

without preference or priority"]: AND SUBJECT to the payment of the said annual sums of £ —, £—, £—, £—, and £—, do and shall pay the dividends, interest, and annual produce of the said trust-monies, stocks, funds, and securities, to my said wife during her life for her own use and benefit: AND FROM AND AFTER the death of my said wife do and shall stand and be possessed of and interested in the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same. I GIVE &c., [*General devise of freehold, copyhold, and leasehold lands to the trustees, supra, p. 5*], their heirs, executors, administrators, and assigns respectively, according to the nature and tenure of the same premises, AS TO SUCH of the said premises as are of copyhold or customary tenure, to be holden according to the customs of the manor or manors whereof the same are respectively holden, and by and under the rents, fines, heriots, suits, and services therefor respectively due, and of right accustomed: AND AS TO SUCH of the said premises as are of leasehold tenure, to be holden for the term or terms, estate or estates, which shall be subsisting in the same at the time of my death, and at, under, and subject to the rents, covenants, conditions, and agreements on the part of the lessee or lessees thereof, his or their executors, administrators, or assigns, to be paid, observed, and performed: AND AS TO ALL and singular the said premises upon and for the trusts, intents, and purposes hereinafter declared, expressed, and contained of and concerning the same, (that is to say) UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators respectively of such survivor, do and shall from time to time during the life of the said C. B. receive the rents, issues, and profits of the said hereditaments and premises, and by and out of the same pay all rents, fines, heriots, taxes, rates, and other outgoings whatsoever, which shall be payable in respect of the said premises, or any of them, and

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—and the residue to the wife for her life.

Trusts of capital by reference to subsequent part of will.

General devise of real estate;

—as to copyholds according to the custom;

—as to leaseholds subject to the rents and covenants.

As to all the premises,

In trust to receive the rents and pay outgoings, repairs, and insurance;

WITH POWER TO SELL COPYHOLDS, AND OTHER SPECIAL CLAUSES.

which the tenants or occupiers thereof, or any other persons, shall not be bound to pay, and also the expenses of keeping the same premises and every of them in good order and repair, and the expense of insuring against loss or damage by fire such part of the said premises as shall be of an insurable nature, and which the tenants or occupiers thereof shall not be bound to keep insured: AND IF the dividends, interest, and annual produce of my said residuary personal estate, or of the stocks, funds, and securities in or upon which the same is hereinbefore directed to be laid out or invested, shall be insufficient to pay the several annual sums hereinbefore directed to be paid thereout, do and shall pay and apply the net residue of the said rents, issues, and profits in or towards payment of the said several annual sums, or such of them as shall for the time being be subsisting and payable, AND SUBJECT thereto, do and shall pay the said net residue of the said rents, issues, and profits unto the said C. B. and her assigns during her life: AND as soon as conveniently may be after the death of the said C. B., do and shall absolutely sell and dispose of &c. [*General trust for sale, supra, p.* 6]: AND DO AND SHALL by and out of the monies to arise from such sale or sales as last aforesaid, pay and discharge or satisfy the costs and expenses incurred in or about or incident to such sale or sales, and stand and be possessed of and interested in the residue of the said monies, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same (*n*). PROVIDED ALWAYS,

—and make up the deficiency (if any) of the annuities directed to be paid out of the income of the personalty;

—and pay the residue to the wife for life.

And after the death of the wife in trust to sell;

—and pay expenses of sale, and hold residue upon trusts declared in a subsequent part of the will.

Direction that

Trusts postponing the sale of real estate till the death of the tenant for life—inconvenience of.

(*n*) The trusts declared by this will of the testator's real estate, are not to be recommended for general use. The best method, and the one used in the other wills in this Work, is to devise the real estate in trust for sale, immediately after the testator's death, blending the produce of that sale and of the sale of the personal estate into one trust fund, and declaring trusts of the rents and profits till sale. It may in such case always be provided that no sale of the real estate, or of any particular part thereof, shall be made in the lifetime of the intended tenant for life without his or her consent. Occasionally, however, testators object to impressing their real estate with an absolute trust for sale till after the death

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and I hereby expressly declare my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs of such survivor, do and shall permit the said C. B., during her life, or so long as she shall please, to have the use and enjoyment of the house at —— aforesaid, in which I now reside, with the garden, pleasure-grounds, and appurtenances thereunto belonging: PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators respectively of such survivor, to make sale and dispose of the said hereditaments and premises lastly hereinbefore devised and bequeathed, or any part or parts thereof, (except the house at ——, in which I now reside, and the garden and pleasure-grounds thereto belonging), in the lifetime of the said C. B., if she shall consent to such sale or sales, or without her consent, if my personal estate not specifically bequeathed (exclusive of the said debts or sums of money owing by the said G. B., but inclusive of the monies to arise from the sale of the said copyhold hereditaments at —— hereinbefore devised for sale as aforesaid,) shall be insufficient to pay my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will, or any codicil or codicils hereto: AND I DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators respectively of such survivor, shall and may, in case of making any such sale or sales as last aforesaid, have and exercise all the same powers, authorities, and discretions, as if the

wife may occupy testator's residence during her life.

Power to the trustees to sell the real estate in the lifetime of the wife with her consent, or if the personal estate be deficient, for the payment of funeral and testamentary expenses, debts, and legacies;

—and in such case to have all powers given on sales after her death.

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of the intended tenant for life; not being able to understand that the effect of the usual trusts with the proposed restriction, is the same as that of a trust for sale only after the death of the tenant for life, with a power with his or her consent to sell in his or her lifetime. To meet this view, therefore, the Precedent in the text has been inserted: but, whenever it is used, particular attention should be given to the powers which follow in the text. If the power to sell were omitted, great inconvenience might ensue, and the power to mortgage may obviously be extremely convenient.

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same sale or sales were made after the death of the said C. B. in pursuance of the trust for sale hereinbefore contained: AND FURTHER, that if any such sale or sales be made in the lifetime of the said C. B., without her consent, the purchaser or purchasers shall not be bound or concerned to see that my said personal estate not specifically bequeathed was insufficient for the payment of my said funeral and testamentary expenses and debts, and the legacies bequeathed by this my will, or any codicil or codicils hereto, or that the money to be produced by such sale or sales is actually wanted for the purposes aforesaid, or otherwise, as to the propriety or expediency of such sale (*o*).

Purchasers not to be concerned to see that the personal estate is deficient.

Power to the trustees, if the personal estate be deficient, to raise money by mortgage.

PROVIDED ALSO, and I declare my will to be, that if my said personal estate not specifically bequeathed shall be insufficient to pay my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will, or by any codicil or codicils hereto, it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators respectively of such survivor, at any time or times during the life of the said C. B., by mortgage or charge of the said hereditaments and premises lastly hereinbefore devised, to levy and raise any sum or sums of money which the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall think neccssary for the payment of the said funeral and testamentary expenses, debts, and legacies, or such part thereof as my said personal estate not specifically bequeathed shall be insufficient to pay, and to pay the interest of the sum or sums so to be raised out of the rents, issues, and profits of the hereditaments to be charged therewith, or out of the annual produce of any part or parts of my said residuary real or personal estate: AND I DECLARE my will to be, that no person or persons advancing any money on any such mort-

Mortgagees not to be concerned

Purchasers to be protected from seeing that the personalty is deficient when the real estate is only to be sold in aid.

(*o*) The necessity for this clause is obvious, since it would be almost impossible to satisfy a purchaser, otherwise than through the medium of a suit for the administration of the testator's estate, that the personal estate was insufficient, or that the money to arise from the sale was wanted.

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gage or charge as aforesaid, shall be bound or concerned to see that my said personal estate not specifically bequeathed was insufficient for the payment of the said funeral and testamentary expenses, debts, and legacies, or that the money proposed to be levied and raised is actually wanted for the purposes aforesaid, or otherwise as to the propriety or expediency of such money being levied or raised (*p*). AND I FURTHER DECLARE my will to be, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall pay and apply the monies to arise from any such sale or sales as last aforesaid, or to be levied and raised by mortgage or charge as aforesaid, or such part or parts (if any) of such monies as shall be needed for that purpose, in payment and discharge of all such part and parts of the said funeral and testamentary expenses, debts, and legacies as my said personal estate not specifically bequeathed shall be insufficient to pay and discharge, AND DO AND SHALL stand and be possessed of and interested in the surplus (if any) of the said monies, upon and for the trusts, intents, and purposes herein declared of and concerning the ready money of which I shall be possessed at the time of my death, and the monies arising from the conversion into money of such part of my residuary personal estate as shall not consist of ready money, but not so as to increase or multiply charges: AND I HEREBY DECLARE my will to be, that subject to the trusts hereinbefore declared, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators of such survivor, do and shall stand and be possessed of and interested in the money to arise or be produced from that part of my personal estate which I have directed to be called in and converted into money, and of and in the ready money of which I shall be possessed at my death, and of and in the monies to arise or be produced by the sale of the said copyhold hereditaments at ——, hereinbefore devised for immediate sale as aforesaid, and of

ed to see that the personal estate is deficient.

Trusts of the monies to be raised by sale or mortgage in the wife's lifetime,

—to make good such deficiency;

—and subject thereto by reference to trusts subsequently declared.

Trusts of the general residuary estate.

(*p*) See supra, p. 124, n. (*o*).

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and in the monies to arise or be produced from the sale or mortgage of the other hereditaments and premises hereinbefore devised in trust for sale as aforesaid, and of and in the debts and sums of money owing by the said G. B., (subject nevertheless, as to the said last-mentioned premises, to the trusts hereinbefore declared for the benefit of the said G. B., his wife, and children), and of and in the stocks, funds, and securities in or upon which the said monies, or any of them, may have been laid out or invested, and of and in the interest, dividends, and annual produce of the said trust-monies, stocks, funds, and securities; UPON TRUST, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators respectively of such survivor, do and shall, by and out of the said trust-monies, stocks, funds, and securities, in the first place, pay and discharge any sum or sums of money which may have been raised by charge or mortgage as aforesaid, and all arrears (if any) of interest thereon: AND SUBJECT and without prejudice to the payment of the said mortgage debts and interest, if my said daughter, H. B., shall be living at the death of my said wife, do and shall, by and out of the interest, dividends, and annual produce of the said trust-monies, stocks, funds, and securities, during the life of the said H. B., pay and apply the annual sum of £——, clear of all deductions except legacy duty, in such manner as the said trustees or trustee for the time being shall think fit, for the maintenance and support of the said H. B. (*q*): AND SUBJECT to the trusts aforesaid, do and shall stand and be possessed of and interested in the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for the said I. B., K. B., D. B., E. B., and F. B., or their respective executors, administrators, and assigns, in equal shares: PROVIDED ALWAYS nevertheless, and I hereby declare my will to be, that they, the said D. B., E. B., and F. B. respectively shall be considered to have received and been advanced the respective sums following; (that is to

—to discharge any mortgages which may have been made,

—and to apply an annual sum for the support of one of the testator's daughters;

—and hold residue in trust for five of the testator's children equally.

Hotchpot clause as to certain sums which the testator desires to be considered

(*q*) The cestui que trust in this case was a lunatic, see supra, p. 117, n. (*f*).

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say), the said D. B. the sum of £——, the said E. B. the sum of £——, and the said F. B. the sum of £——, and shall not have or be entitled respectively to any share in the said trust-monies, stocks, funds, and securities, interest, dividends, and annual produce, the trusts whereof are hereinbefore declared, without bringing the respective sums aforesaid into hotchpot, and accounting for the same accordingly. PROVIDED ALWAYS, and I hereby declare my will to be, that subject and without prejudice to the trusts hereinbefore declared prior to the said trusts in favour of the said H. B., I. B., K. B., D. B., E. B., and F. B., it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, after the death of my said wife, instead of selling the said freehold, copyhold, and leasehold hereditaments and premises hereinbefore given, devised, and bequeathed to the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns, upon the trusts hereinbefore declared of the same, or such of the same hereditaments and premises as shall then remain unsold, to appropriate and allot the same, or any of them, in or towards the satisfaction of the shares of the said I. B., K. B., D. B., E. B., and F. B., or their respective executors or administrators, or of the appropriation required for answering the said annual sum of £—— hereinbefore directed to be applied for the benefit of the said H. B. for her life, in or of the several trust-monies, stocks, funds, and securities, the trusts whereof are hereinbefore declared, and every or any such appropriation or allotment shall be made for and in respect of such sum of money, and in other respects, in such manner as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall deem fair and expedient: AND I DECLARE that in case of any such appropriation or allotment being made as aforesaid, the said E. F., G. H., and I K., and the survivors and survivor of them, or the heirs, executors, or administrators respectively of such survivor, shall make, do, and execute all such conveyances, surrenders, assignments, acts, deeds, matters, and things whatsoever, as

as advanced to certain of his sons.

Power to allot and appropriate specific parts of testator's property in lieu of share of residue.

Direction on such appropriation to do all necessary things.

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shall be necessary or proper for giving full effect to such appropriation or allotment (*r*). [*Power to grant leases for twenty-one years, supra, p.* 12. *Income of the unsold estate to go as the income of the investments, supra, p.* 12. *Devise of trust and mortgage estates, supra, p.* 13. *Appointment of executors with powers to arrange and compromise, supra, p.* 14. *Trustees' receipts to be discharges, supra, p.* 15. *Power to appoint new trustees, supra, pp.* 15, 34. *Clauses for the indemnity of trustees and the payment of their expenses, supra, pp.* 17, 18, 35.] IN WITNESS &c.

XII.

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

WILL *of* REAL *and* PERSONAL *Estate.* GIFT *of a* LEGACY *and* ANNUITIES, *one* ANNUITY *being for the* SEPARATE USE *of a Woman.* GENERAL DEVISE *of* FREEHOLD *Estate, for the* SEPARATE USE *of a Woman for Life, with* REMAINDERS *for* LIFE, *and in* TAIL. NAME AND ARMS' CLAUSES. POWER *to a* FEMALE TENANT *for* LIFE *to appoint a* RENT-CHARGE *to any* HUSBAND. POWERS *of* JOINTURING *and charging* PORTIONS. TRUSTS *during* MINORITIES *of* DEVISEES. POWERS *of* LEASING. POWER *of* SALE *and* EXCHANGE. DEVISE *of* COPYHOLDS *and* LEASEHOLDS *upon* TRUSTS *to correspond with the* USES *of the* FREEHOLDS, *and with Provisions for*

Power to allot and appropriate the testator's property in specie.

(*r*) See the power to allot and appropriate the testator's property in specie, among the legatees of the produce, supra, p. 66. In the case in the text, the power embraces real estate, and is therefore followed by the direction to execute all conveyances and other deeds required for giving it effect.

Renewal. BEQUEST *of* CHATTELS *to go along with the* FREEHOLDS *as* HEIRLOOMS. GENERAL BEQUEST *of* PERSONALTY *to pay funeral and testamentary Expenses, Debts, and Legacies, and satisfy Annuities—the* RESIDUE *to be laid out in* LAND *to be* SETTLED. USUAL CLAUSES.

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

I, A. B., of &c., do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and declare this to be my last will and testament. I GIVE to ——, of ——, the sum of £——, to be paid to her at or before the expiration of twelve calendar months from my death, but without interest in the mean time (*a*). I GIVE and bequeath an annuity of £—— to G. H., of ——, during his life. I GIVE and bequeath an annuity of £—— to ——, the daughter of ——, during her life, for her sole and separate use, independently and exclusively of any husband with whom she may intermarry, and of his debts, control, interference, or engagements, and her receipts, whether covert or sole, to be sufficient discharges for the same (*b*). I GIVE and bequeath an annuity of £—— to —— (*as the last*). AND I DIRECT that the said annuities of £——, £——, and £——, shall be paid clear of all deductions except legacy duty (*c*), by equal half-yearly payments, the first half-yearly payment thereof respectively to be made at the expiration of six calendar months from the day of my death, if the same respectively shall then be payable. I GIVE and devise my manor and mansion-house of —— aforesaid, with the pleasure-grounds, gardens, plantations, lands, rights, easements, and appurtenances thereunto belonging, or therewith held or enjoyed, and all and singular other my messuages, farms, lands, tenements, and hereditaments, situate

Gift of a legacy:

—of an annuity:

—of an annuity for the separate use of a married woman.

Direction as to payment of annuities.

General devise of freehold estate.

(*a*) As to the time of payment of, and interest on, legacies, see supra, p. 3, n. (*c*), p. 28, n. (*k*).

(*b*) As to trusts for the separate use of married women, see supra, p. 4, n. (*d*), p. 84, n. (*b*). See too the clauses precluding anticipation, supra, pp. 57, 84, 87.

(*c*) As to giving legacies and annuities clear of legacy duty, see supra, p. 21, n. (*a*).

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

in the parish of ——, in the county of —— (or such part or parts thereof as are freehold of inheritance), with their rights, easements, and appurtenances, and all and singular other the manors, messuages, farms, lands, tenements, hereditaments, and real estate, situate in the counties of —— or ——, or elsewhere soever, and being freehold of inheritance, of or to which I am now, or at the time of my death, shall or may be seised or entitled, either at law or in equity, for any devisable estate or interest, or of which I now have power to dispose by this my will (except what I otherwise devise or dispose of by this my will), TO THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter expressed, declared, and contained of and concerning the same: that is to say; To THE USE of L. M., of &c., and N. O., of &c., and their heirs, during the life of my niece, E. D., the daughter of ——, now deceased, UPON TRUST that the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, do and shall preserve the contingent uses and estates hereinafter limited from being defeated or destroyed; and for that purpose make entries and bring actions as occasion shall require, but nevertheless permit the said E. D. to use, occupy, and enjoy the said hereditaments and premises, and receive and take the rents, issues, and profits thereof, during her life, for her sole and separate use, independently and exclusively of any husband with whom she may intermarry, and of his debts, control, interference, or engagements, and the receipts of the said E. D., whether covert or sole, shall be sufficient discharges for the same (*d*); AND FROM and after the death of the said E. D., TO THE USE of the first and every other son of the said E. D. successively, according to their respective seniorities in tail(*e*),

To uses.

To the use of trustees during the life of testator's niece to preserve the contingent remainders, and for her separate use.

Remainder to her sons and daughters successively in tail:

(*d*) As to trusts for the separate use of married women, see supra, p. 4, n. (*d*), p. 84, n. (*b*). See too the clauses precluding anticipation, supra, pp. 57, 84, 87.

Manner of li-

(*e*) The word "heirs" is not essential to create an estate of inheritance

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

WITH REMAINDER (*f*) to the use of the first and every other daughter of the said E. D. successively, according to their respective seniorities, in tail, WITH REMAINDER to the use of F. C. and his assigns during his life, without impeachment of waste, AND after the determination of that estate by any means in his lifetime, TO THE USE of the said L. M., and N. O., and their heirs during the life of the said F. C., UPON TRUST to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions as occasion shall require; but nevertheless to permit the said F. C. and his assigns during his life to receive and take the rents, issues, and profits of the same premises for his and their own use and benefit (*g*): AND FROM AND AFTER the death of the said F. C., TO THE USE of his first and every other son successively, according to their respective seniorities, in tail, WITH REMAINDER to the use of the first and every other daughter of the said F. C. successively, according to their respective seniorities, in tail, WITH REMAINDER to the use of the first and every other son of ——, deceased, successively, according to their respective seniorities, in tail, WITH REMAINDER to the use of the first and every other daughter of the said —— successively, according to their respective seniorities, in tail, WITH REMAINDER to the use of my own right heirs for ever:

—to another person for life:

—to trustees during his life to preserve the contingent remainders:

—to his sons successively in tail:

—to his daughters successively in tail:

—to the sons of a deceased person successively in tail:

—to the daughters of the same person successively in tail:

—to the testator's right heirs.

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by will; and therefore in framing wills, instead of the form employed in settlements, ante, Vol. 4, p. 505, it is sufficient to indicate the testator's intention by the expressions "in tail," or "in tail male," as the case may be. It should of course be stated whether the devisees are to take in succession according to seniority, or together as tenants in common in equal shares.

miting estates tail by will.

(*f*) The words "with remainder" are very commonly used in wills to introduce the successive limitations, instead of the more formal expression "in default of such issue," and the like. The more formal expressions are however frequently used, as in Precedent XIV., infra.

On introducing remainders in wills.

(*g*) With respect to the trust to preserve contingent remainders, see the references, ante, Vol. 4, p. 502; and on the subject of remainders generally, see the note at the end of this Precedent, infra, p. 150.

Remainder.

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

PROVIDED ALWAYS, and I hereby declare my will to be, that every male person who, and every female person who, or whose husband in her right, under or by virtue of [the limitations hereinbefore contained, or of this or any other proviso in (*h*)] this my will, shall become entitled to the possession or to the receipt of the rents and profits of the hereditaments and premises hereinbefore devised, shall and do, within one year next after any such person shall so become entitled to the possession, or to the receipt of the rents and profits of the said hereditaments and premises, if he or she shall then be of the age of twenty-one years, and if he or she shall then be under the age of twenty-one years, then within one year next after he or she shall attain the age of twenty-one years, take upon himself and herself, and use in all deeds and writings to which he or she shall be a party, or which he or she shall sign, and upon all other occasions, the surname of ——, either alone, or in addition to and after his or her original surname, and also take, use, and bear the arms of ——, either alone or quartered with his or her original arms, and shall and do, within the time aforesaid, apply for and endeavour to obtain an act of Parliament, or license from the Crown, or take such other means as may be requisite, to enable and authorize him or her to take, use, and bear the surname of ——, either alone, or in addition to and after his or her original surname, and to take, use, and bear the arms of ——, either alone or quartered with his or her original arms: PROVIDED ALSO, and I hereby declare my will to be, that every person who shall intermarry with any female who under or by virtue of [the limitations hereinbefore contained, or this or any other proviso in (*h*)] this my will shall at the time of such marriage be, or who, or whose husband in her right, shall subsequently become entitled to the possession or to the receipt of the rents and profits of the hereditaments and premises hereinbefore devised, shall and do

Proviso that every person taking under the will, and not bearing the name and arms of the testator, shall take and bear the same alone, or in addition to his or her own surname and arms.

Similar proviso as to any person marrying a female taking under the will.

(*h*) The words in brackets, though usual, may very properly be omitted.

within one year next after any such person shall so marry, or after his wife, or he in her right, shall so become entitled as aforesaid (which shall last happen), if he shall then be of the age of twenty-one years, and if he shall then be under the age of twenty-one years, then within one year next after he shall attain the age of twenty-one years, take upon himself and use, in all deeds and writings to which he shall be a party, or which he shall sign, and upon all other occasions, the surname of ,—— either alone or in addition to and after his original surname, and also take, use, and bear the arms of ——, either alone or quartered with his original arms, and shall and do, within the time aforesaid, apply for and endeavour to obtain an act of Parliament, or license from the Crown, or take such other means as may be requisite to enable and authorize him to take, use, and bear the surname of ——, either alone or in addition to and after his original surname, and to take, use, and bear the arms of ——, either alone or quartered with his original arms (*i*).

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

AND I HEREBY ALSO DECLARE my will to be, that in case any male person who, or any female person who, or whose husband in her right, under or by virtue of [the limitations hereinbefore contained, or of this or any other proviso in (*k*)] this my will, shall become entitled to the possession or to the receipt of the rents and profits of the said hereditaments and premises hereinbefore devised, or the husband of any such person, being a female, shall refuse or neglect to take or use such surname and arms as aforesaid, and in manner aforesaid, and to take such steps and means as may be required or proper to enable and authorize them respectively so to do, within the space of time hereinbefore mentioned for them respectively, then from and after the expiration of such space of time, the limitations hereinbefore contained of the said

Proviso for forfeiture of the estate of the person neglecting or refusing to take such name and arms;

(*i*) This proviso, if made compulsory as usual, and as in the will in the text, may produce great inconvenience when an estate is given (as in the text) to a female for her separate use; because it enables the husband to occasion a forfeiture of that estate in which he takes no interest, and consequently tends to place the wife's estate virtually under his control.

Name and arms' clause as to the husbands of females taking estates for their separate use.

(*k*) See supra, p. 132, n. (*h*).

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

hereditaments and premises to or in trust for the person who, or being a female who, or whose husband, shall so neglect or refuse as aforesaid, shall cease and determine and become utterly void, and the said hereditaments and premises shall, in such case, immediately thereupon devolve to the person next in remainder, under the limitations hereinbefore contained, in the same manner as if such person who or whose husband shall so neglect or refuse, being tenant for life, either at law or in equity, were dead, or, being tenant in tail, were dead without issue; SUBJECT NEVERTHELESS, and without prejudice to any such annual sum or annual sums, yearly rent-charge or yearly rent-charges, portions or portion, and the term or terms of years, remedies and securities for the same respectively, and any such lease or leases, or demise or demises as before such cesser or determination as aforesaid shall have been limited, settled, appointed, or created of and in the said hereditaments and premises hereinbefore devised, or any of them, pursuant to and by virtue of any of the powers hereinafter contained, EXCEPT any such annual sum or yearly rent-charge, annual sums or yearly rent-charges as may have been limited or appointed to any husband so neglecting or refusing as aforesaid, and the term or terms of years, remedies, and securities for the same respectively; AND I DO HEREBY DECLARE my will to be, that the cesser or determination of the estate of the said E. D., or of any other person hereby made tenant for life at law or in equity, with remainder to his or her issue in tail as aforesaid, by force of the proviso lastly hereinbefore contained, shall not operate to exclude, prevent, or prejudice any of the contingent remainders hereinbefore limited to his or her issue, or any other person or persons; but that the estate limited to the said L. M. and N. O., and their heirs during the lifetime of such tenant for life, shall, after such cesser or determination, take effect and continue for preserving such contingent remainders, and giving them effect as they may arise, and that immediately from and after such cesser or determination of such preceding estate for life, and during such suspense and contingency of such then expectant remainder, the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, shall receive,

— but without prejudice to estates created under powers appendant to such estates;

—except in a particular case.

Forfeiture of estates for life not to prejudice contingent remainders;

pay, and apply the rents and profits of the said hereditaments and premises which would belong to such tenant for life, if such cesser or determination had not taken place, to the person or upon and for the trusts, intents, and purposes to whom or upon and for which the same rents, issues, and profits would be or would have been payable, under or by virtue of the limitations and provisoes in this my will contained, in case such tenant for life were actually dead, so that from and immediately after such cesser and determination, the issue of such tenant for life entitled for the time being, under or by virtue of this my will to the said hereditaments and premises in remainder, immediately expectant on the decease of such tenant for life, may be entitled to the rents, issues, and profits of the said hereditaments and premises, for his or her own proper use and benefit, during the life of the parent, as if such parent were dead; and that in case no such issue entitled as aforesaid shall be in existence, then during the vacancy or contingency of such issue, the person next entitled for the time being, under the limitations aforesaid, to a vested remainder in the said hereditaments and premises expectant on the decease of such tenant for life, and such failure of issue of his or her body, shall and may be entitled to the said rents and profits for his or her own use and benefit; but without any exclusion of or prejudice to the estate, interest, or right of any such issue afterwards coming into existence, but only until the birth of such issue respectively: PROVIDED ALWAYS, and I hereby declare my will to be, that the cesser or determination of the estate of any person, by virtue of or under any of the provisoes hereinbefore contained, shall not in anywise prejudice or affect any such annual sum or annual sums, or yearly rent-charges, portion or portions, or the term or terms of years, remedies and securities for the same respectively, lease or leases, or demise or demises as before such cesser or determination shall have been limited, settled, appointed, or created of and in the said hereditaments and premises by this my will devised, or any of them, pursuant to and by virtue of the powers in this my will for such purposes respectively contained, other than

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

—or estates created under powers appendant to the forfeited life estates.

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

any annual sum or annual sums, yearly rent-charge or yearly rent-charges appointed to any husband who shall neglect or refuse as aforesaid, and the term or terms of years, remedies, and securities for the same respectively (*l*). PROVIDED ALSO, and I hereby declare my will to be, that it shall be lawful for the said E. D., at any time or times during her life, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, to grant, limit, and appoint unto any husband or husbands respectively whom she shall marry or have married, for his or their life or respective lives, any annual sum or yearly rent-charge, or annual sums or yearly rent-charges, not exceeding in the whole the yearly sum of £ ——, for the life of any such husband, to be issuing and payable out of, and charged and chargeable upon, all or any of the hereditaments and premises hereinbefore devised, to be free from all deductions whatsoever, and to be paid at such times and in such manner as to the said E. D. shall seem meet; AND for the purpose of securing the annual sum or yearly rent-charge, or annual sums or yearly rent-charges, so to be appointed as aforesaid, to limit or appoint to the person or persons respectively for whom the same shall be provided as aforesaid, usual powers and remedies for recovering and enforcing payment thereof respectively, by distress and entry upon and detention of the possession or perception of the rents, issues, and profits of the hereditaments and premises to be charged therewith; AND ALSO to limit and appoint the said hereditaments and premises so to be charged as aforesaid to any person or persons whomsoever, for any term or terms

Power to the female tenant for life to appoint rent-charges in the nature of jointures to any husband;

—with usual powers;

—and a term of years for securing the same.

Name and arms' clauses.

(*l*) See the observations on clauses as to taking the name and arms of the testator; Harg. & Butl. Co. Lit. 327. a. n. 2; II. 2, 3; and the form there given. See also the forms in Precedents XIII., XIV., infra; and the form in a settlement, ante, Vol. 4, p. 619, n. (*h*). Clauses of the kind referred to are very difficult to frame, but seldom give rise to actual litigation; because, if there be any doubt whatever, the name and arms are assumed.

of years, with or without impeachment of waste, to take effect immediately after the decease of the said E. D., upon such usual trusts for better securing the payment of the same annual sum or yearly rent-charge, or annual sums or yearly rent-charges respectively, as to the said E. D. shall seem meet; but so that every such term of years be made to cease (subject and without prejudice to any disposition or dispositions which may be made under the trusts to be declared thereof) on the death of the person for the benefit of whom the same shall be created, and the payment of the arrears (if any) of his rent-charge or rent-charges, and the expenses (if any) to be incurred by reason of the non-payment thereof (*m*): PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said F. C., as and when by virtue of this my will he shall be in the actual possession or entitled to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to grant, limit, and appoint unto any woman or women respectively whom he shall marry or have married, for her or their life or respective lives, and in full or in part only for or in the nature of her or their jointure or respective jointures, and in bar or without being in bar of her or their dower or free bench, any annual sum or yearly rent-charge, or annual sums or yearly rent-charges, not exceeding in the whole, for any one such woman, the clear yearly sum of £——, to be issuing and payable out of, and charged and chargeable upon, all or any of the said hereditaments and premises hereinbefore devised, to be free from all deductions whatsoever, and to be paid at such times and in such manner as to the said F. C. shall seem meet; AND for the pur-

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

Power of jointuring;

(*m*) This power may be easily altered to meet the case of there being several female tenants for life. See the power of jointuring, infra, Precedent XIV.

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

pose of securing the annual sum or yearly rent-charge, or annual sums or yearly rent-charges so to be appointed as last aforesaid, to limit or appoint to the woman or women respectively to whom the same shall be appointed as aforesaid, usual powers and remedies for recovering and enforcing the payment thereof respectively by distress and entry upon and detention of the possession or perception of the rents, issues, and profits of the hereditaments and premises so to be charged therewith as aforesaid. AND ALSO to limit and appoint the hereditaments and premises so to be charged as aforesaid to any person or persons whomsoever for any term or terms of years, with or without impeachment of waste, to take effect immediately after the decease of the said F. C., upon such usual trusts for better securing the payment of the same annual sum or yearly rent-charge, or annual sums or yearly rent-charges respectively, as to the said F. C. shall seem meet; but so that every such term of years be made to cease, (subject and without prejudice to any disposition or dispositions which may be made under the trusts to be declared thereof,) on the death of the woman, for the benefit of whom the same shall be created, and the payment of the arrears (if any) of her rent-charge or rent-charges, and the expenses (if any) to be incurred by reason of the non-payment thereof (*n*): PROVIDED ALWAYS, and I hereby declare my will to be, that the said hereditaments and premises, or any of them, shall not, under or by virtue of the powers hereinbefore contained, be at any one time subject to the payment of any annual sums or yearly rent-charges exceeding in the whole the annual sum of £——, so that if, in consequence of the exercise of the same powers, the said hereditaments and premises, or any of them, would, if this present proviso had not been inserted in this my will, have been for the time being charged with the payment of annual sums or yearly rent-charges exceeding, for a husband of the said E. D. and a wife of the said F. C., in the whole the annual sum of £——, the annual sum or annual sums ap-

—and limiting usual remedies;

—and a term of years for securing the jointure.

Proviso that the estates shall not, under the preceding powers, be charged at one time with more than a given annual sum.

(*n*) For a power of jointuring when there are several tenants for life, and which may be exercised either before or after coming into possession, see infra, Precedent XIV.

pointed by the said F. C., by which such excess shall have been occasioned, or such part thereof respectively as shall have occasioned and shall form such excess, shall from time to time during the continuance of such excess absolutely sink into and not be raisable out of the said hereditaments and premises (*o*): PROVIDED ALSO, and I hereby declare my will to be, that it shall be lawful for the said E. D. and F. C., as and when by virtue of the limitations of this my will they shall successively and respectively be in the actual possession or entitled to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by them respectively sealed and delivered in the presence of, and to be attested by, two or more credible witnesses, or by their respective last wills and testaments in writing, or any codicil or codicils thereto, to subject and charge all or any part of the same hereditaments and premises to and with the payment, for the portion or portions of the child or children, or any one or more exclusively of the other or others of the children of the person making such charge, (other than or besides an eldest or only son, or an eldest daughter for the time being entitled under or by virtue of this my will to the possession or to the first estate of inheritance of the same hereditaments and premises), of any sum or sums of money not exceeding the sum of £——, with interest for the same at any rate not exceeding £—— per cent. per annum, to be computed from the decease of the person making the charge, or any subsequent time or times, to be shared or divided between or amongst the children respectively entitled thereto, if more than one, in such parts, shares, and proportions, and to be an interest vested or interests vested in, and to be paid to such child or children respectively, on or at such ages, days, or times, and with such provisions for the maintenance and education and advancement or preferment in the world of any such chil-

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

Power to the successive tenants for life to charge portions for younger children;

(*o*) See the form of this proviso, when there are several donees of the power, infra, Precedent, XIV.

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

dren, either at the discretion of any trustee or trustees to be appointed in that behalf, or otherwise, and charged with such annual sum or sums of money, and with such limitations over such annual sum or sums of money, and limitations over to be for the benefit of some one or more of such last-mentioned children respectively, and in such manner as the person making such charge shall deem meet; and shall, by the same or any other deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be sealed and delivered and attested as aforesaid, or by her or his last will and testament in writing, or any codicil or codicils thereto, direct or appoint. AND THAT, for providing for the raising of such portion or portions as aforesaid, and interest for the same respectively, it shall be lawful for the person making such charge, by the same or any other deed or deeds, instrument or instruments in writing, to be sealed and delivered, and attested as aforesaid, or by her or his last will and testament in writing, or any codicil or codicils thereto, to direct or appoint all or any part of the hereditaments and premises so to be charged, to any person or persons whomsoever, for any term or terms of years, with or without impeachment of waste, upon usual trusts, by mortgage or otherwise, to levy and raise the money so to be charged, and the interest thereof, and the costs, charges, and expenses (if any) to be incurred in or about the execution of the trusts: PROVIDED ALWAYS, and I hereby declare my will to be, that the said hereditaments and premises hereinbefore devised, or any of them, shall not, under or by virtue of the power hereinbefore contained, of charging with portions for younger children, become ultimately subject or liable to the payment of any greater sum of money in the whole for portions than the principal sum of £——, so that if, by the exercise of the same power of charging the same estates, or any of them would, in case this present proviso had not been inserted in this my will, have been charged with a greater sum for portions in the whole than the principal sum of £——, the charge or charges made by the said F. C., which shall have created such excess, shall not take effect as to the portion or portions to be thereby respectively charged, or as to so

—and to limit terms for securing them.

Proviso that the hereditaments shall not at any one time be charged with more than a given sum for portions.

much or such part thereof as shall form such excess (*p*). PROVIDED ALWAYS, and I declare my will to be, that if the said E. D., or any other person who, under or by virtue of this my will, would, (if this present proviso had not been herein inserted), for the time being be entitled to the possession or receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised, as tenant for life, or tenant in tail by purchase (*q*), shall be under the age of twenty-one years, then and in such case, and so often as the same shall happen, the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, do and shall enter into the possession or receipt of the rents, issues, and profits of the same hereditaments and premises; and do and shall, during the minority of such tenant for life, or tenant in tail by purchase, hold and continue such possession or receipt of rents, issues, and profits, and manage or superintend the management of the same hereditaments and premises, with full power to fell timber from time to time for repairs, or in the usual course for sale or otherwise (*r*). AND FROM time to time during such minority, do and shall, by and out of the rents, issues, and profits of the same hereditaments and premises, (including the produce of the sale of timber,) after deducting the expenses of management, repairs, and insurance, and other outgoings, and satisfying and keeping down any annual sum or sums of money which may be charged upon the same hereditaments and premises, or any part or parts thereof, and the interest of any principal sum or sums of money which may be charged by way of mortgage or otherwise upon the same premises, or any part or parts thereof,

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

Proviso that the trustees shall manage the estates during the minority of any tenant for life or in tail;

—and apply a competent part of the net income for the benefit of the minor;

(*p*) See the form of a power to charge portions when there are several persons empowered to charge, and the power may be exercised either before or after coming into possession, infra, Precedent XIV.

(*q*) The trust for accumulation must be confined to the minority of a tenant for life or tenant in tail *by purchase;* see *Lord Southampton* v. *Marquis of Hertford*, 2 Ves. & Bea. 54: *Marshall* v. *Holloway*, 2 Swanst. 432.

(*r*) See the more elaborate trusts for management, ante, Vol. 4, p. 630, and pp. 643—645.

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

apply any annual sum or sums of money which they or he shall think proper, according to the age of such minor, in the maintenance and education of such minor: AND do and

—and invest and accumulate the residue.

shall lay out and invest the surplus or residue of such rents, issues, and profits, in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, (but not in Ireland), to be from time to time altered or varied as to them or him shall seem meet; and do and shall accumulate all the interest, dividends, and annual produce of the said stocks, funds, and securities, in the way of compound interest, by investing the same, and all the resulting income and produce thereof, from time to time, in their or his names or name, upon any such stocks, funds, or securities as aforesaid. AND I HEREBY DECLARE my will and mind to be, that the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, shall stand and be possessed of and interested in the said rents, issues, and profits, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, UPON THE TRUSTS following: that is to say; IF the tenant for life or tenant in tail by purchase, during whose minority the said rents, issues, and profits shall have accumulated as aforesaid, shall attain the age of twenty-one years, or shall die under that age leaving issue entitled or inheritable under this my will, then upon trust (unless the interest of such tenant for life or tenant in tail shall have arisen and shall determine under the clauses next hereinafter referred to (*s*)) to pay, transfer, or assign the same to such tenant for life or tenant in tail, his or her executors or administrators, as personal estate of such

Trusts of the income so invested, and of the accumulations thereof.

Provision for there being a vacancy or contingency of issue entitled.

(*s*) These words and the words immediately below, referring to the destination of the income during a vacancy or contingency of issue entitled, will of course be omitted in wills under which no such vacancy or contingency can happen. It should be observed, however, that such vacancy or contingency may occur otherwise than under the name and arms' clause; as, for example, where an estate is limited to the child of a person not taking a prior life estate, as in Precedent XIV., infra.

person, and in case of the said E. D., for her sole and separate use; but if the tenant for life, or tenant in tail by purchase, during whose minority such rents, issues, and profits shall have accumulated as aforesaid, shall die under the age of twenty-one years, without leaving issue entitled or inheritable under this my will, or if his or her interest in the said rents, issues, and profits shall have arisen under the clauses hereinbefore contained, providing for the destination of the said rents, issues, and profits, after the forfeiture of a tenant for life, and a vacancy or contingency of issue of such tenant for life, and such interest shall determine by such issue coming into existence, then upon trust upon the decease of such person, or the birth of such issue as aforesaid, to convert the same into money, and to stand and be possessed of and interested in the same, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared and contained of and concerning the monies to arise or be produced from any sale which may be made in pursuance of the power of sale hereinafter contained (*t*): PROVIDED NEVERTHELESS, and I hereby declare my will to be, that the trusts or power lastly hereinbefore contained, shall not in anywise affect, or be deemed or construed to affect, the estate hereinbefore limited to the said L. M. and N. O., and their heirs, during the life of the said E. D., in trust for her separate use as aforesaid, further or otherwise than to give the said trustees or trustee for the time being such additional powers, during the minority of the said E. D., as are hereinbefore expressed and are not incident to the general trust reposed in the said trustees during the life of the said E. D. PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said E. D., (having first attained the age of twenty-one years), and F. C., as and when, by virtue of the limitations hereinbefore contained, they shall successively and respectively be in the actual possession of or entitled to the receipt of the rents, issues, and profits of the

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

Proviso as to the estate of the trustees for the separate use of the first tenant for life.

Power of leasing for twenty-one years.

(*t*) See infra, p. 149, n. (*z*).

OF LAND, AND MONEY TO BE LAID OUT IN LAND.

said hereditaments and premises hereinbefore devised, and also for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, from time to time, and at all times during the minority of the said E. D., and of any person or persons who, by virtue of the limitations aforesaid, shall for the time being be entitled to any estate of freehold and inheritance of and in the said hereditaments and premises, by any indenture or indentures, to be sealed and delivered by them respectively in the presence of &c. [*Power of leasing for twenty-one years, as in the form in Precedent XIV., infra,* (*u*).]

Power of sale and exchange.

PROVIDED ALSO, and I hereby further declare my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, at any time or times after my death, at the request and by the direction testified in writing of the said E. D., (after she shall have attained the age of twenty-one years), or of the said F. C., if and when he shall, under or by virtue of this my will, be entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised, and also from time to time during the minority of the said E. D., or of any son or daughter of the said E. D., F. C., or —— [*the deceased person whose children are made tenants in tail by purchase*], who, if of full age, would for the time being be entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises, at the discretion of the said L. M. and N. O., or the aurvivor of them, or the executors or administrators of such survivor, to dispose of and convey, either by way of absolute sale, or in exchange, &c. [*Power of sale and exchange, infra, Precedent XIV., with similar alterations in the clauses as to the consents and discretion as are here made in the introduction.*]

Devise of copyholds.

I GIVE AND DEVISE all and every the

Leasing powers.

(*u*) Powers to grant building and repairing leases, and mining leases may be adapted to the will in the text, by combining the forms of those powers contained in Precedent XIV., infra, with the introduction to the above power of leasing in this will.

copyhold and customary messuages, lands, tenements, and hereditaments wheresoever situate, of or to which I am now or at the time of my death shall or may be seised or entitled, either at law or in equity, for any devisable estate or interest, or of which I now have power to dispose by this my will (except what I otherwise devise or dispose of by this my will, or any codicil hereto), UNTO and to the use of the said L. M. and N. O., their heirs and assigns, according to the custom or customs of the manor or manors of which the same respectively are holden, and at and under the rents, fines, heriots, suits, and services therefore respectively due and of right accustomed, UPON AND FOR such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as shall or may as nearly correspond with and be similar to the uses, trusts, intents, and purposes, powers, provisoes, and declarations hereinbefore limited, declared, and contained of and concerning the freehold hereditaments and premises hereinbefore devised in strict settlement, as the different tenure and quality of the premises, and the rules of law and equity, will permit, but not so as to increase or multiply charges (*v*). I GIVE, DEVISE, AND BEQUEATH all and every the leasehold messuages, lands, tenements, and hereditaments wheresoever, (whether holden for any life or lives, or for any term or terms of years, absolute or determinable with any life or lives), of or to which I am now or at the time of my death shall or may be seised, possessed, or entitled for any estate or interest which I can devise or bequeath by will, or of which I now have power to dispose by this my will, (except what I otherwise devise, bequeath, or dispose of by this my will, or any codicil hereto), UNTO the said L. M. and N. O., their executors, administrators, and assigns, for all such estate, term, or interest as I shall have therein respectively at the time of my decease, UPON TRUST that they, the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, do and shall, by and out of the

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—to trustees,

—upon trusts to correspond with the uses of the freeholds.

Devise and bequest of leaseholds,

—to trustees.

—Upon trust to pay the rents and perform the covenants.

(*v*) As to the mode of making settlements of copyholds, see ante, Vol. IV., p. 547, n. (*t*).

Settlement of copyholds.

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rents, profits, and annual produce thereof, pay the rents and annual sums reserved in and by the leases thereof respectively, and observe and perform the covenants and conditions in the said leases respectively contained, and on the part of the several lessees, or their respective executors, administrators, or assigns, to be observed or performed; AND SUBJECT THERETO, do and shall stand and be seised or possessed of and interested in the said leasehold premises, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations as shall or may as nearly correspond with and be similar to the uses, trusts, intents, purposes, powers, provisoes, and declarations hereinbefore limited, declared, and contained of and concerning the freehold hereditaments and premises hereinbefore devised in strict settlement, as the different tenure and quality of the premises, and the rules of law and equity will permit, but not so as to increase or multiply charges: PROVIDED ALWAYS, and I hereby declare my will to be, that such of the said last-mentioned hereditaments and premises as are holden for any lease or leases for years, shall not vest absolutely in any person hereby made tenant in tail by purchase of the said freehold hereditaments and premises hereinbefore devised in strict settlement, unless such person or persons shall attain the age of twenty-one years, but on the decease of any such person, being tenant in tail by purchase under or by virtue of this my will, shall go, devolve, and remain in the same manner as if they had been freeholds of inheritance, and had been included in the devise in strict settlement hereinbefore contained (*x*): PROVIDED ALWAYS, and I hereby declare my will to be, that the said L. M. and N. O., and the survivor of them, and the heirs, executors, or administrators respectively of such survivor, do and shall from time to time as occasion shall require, in the ordinary course of renewal, use their and his best endeavours to obtain on the accustomed reasonable terms a renewed lease or leases, grant or grants of such of the said leasehold or copyhold premises as shall be held for a

—and subject thereto, upon trusts to correspond with the uses of the freeholds.

Leaseholds for years not to vest absolutely in any tenant in tail by purchase, dying under twenty-one.

Direction to renew renewable copyholds and leaseholds in due course;

Settlement of leaseholds.

(*x*) As to settlements of leaseholds, see Harg. & Butl. Co. Litt. 20. a. n. (5); Id. 290. b. n. (1), XII.

lease or leases, or grant or grants for lives or years ordinarily renewable, and do and shall from time to time make, do, and execute all such surrenders, acts, deeds, matters, and things as shall be requisite or expedient for obtaining such renewals: AND I HEREBY FURTHER DECLARE, that the fines, fees, and expenses of such renewals shall from time to time be defrayed by and out of the premises of which such renewals are to be obtained respectively, so and in such manner that the several persons beneficially entitled to the same under or by virtue of this my will, shall contribute to the expense of such renewals in the proportions in which, according to the rules of courts of equity, they would be bound to contribute, in the absence of any provision in this my will as to the parties at whose expense such renewals are to be made; PROVIDED ALWAYS, and I hereby further declare, that it shall be lawful for the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, to raise any money which shall be required for the renewal of any such lease or grant as aforesaid, by mortgage of the hereditaments to be taken by renewal as aforesaid, or of any other hereditaments for the time being subject to the subsisting uses or trusts of this my will, and to make all such appointments, assignments, surrenders, and other assurances, and do all such other acts as shall be necessary or expedient for the purpose of effectuating any such mortgage or mortgages; and no mortgagee advancing money upon any mortgage purporting to be made under this power, shall be bound to see that such money is wanted, or that no more than is wanted is raised (*y*). I GIVE AND BEQUEATH all and singular the pictures, prints, statues, maps, books, jewels, coins, medals, articles of virtù, plate, china, household goods and furniture (*z*), which at my decease shall be in or about my said capital messuage or

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—and as to the manner in which the expense of renewals shall be defrayed.

Power to raise money for the expense of renewals.

Bequest of pictures, plate, &c., to trustees, upon trust that the same may be enjoyed along with the

(*y*) The general clause as to the receipts of trustees will exonerate the mortgagees from seeing to the application of the money.

As to the proper provisions for renewal, see ante, Vol. IV, p. 347, n. (*f*); and as to the mode of raising and apportioning the expenses, see ante, Vol. IV, pp. 350, n. (*g*), 351, n. (*h*).

Expense of renewing settled leaseholds.

(*z*) As to what passes by such a bequest as that in the text, see supra, p. 95, n. (*g*); see, too, supra, p. 114, n. (*b*), and p. 3, n. (*a*).

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mansion-house of ——, unto the said L. M. and N. O., their executors, administrators, and assigns, IN TRUST to permit the same to go along with and be used and enjoyed, so far as the rules of law and equity will permit, by the person or persons who, under or by virtue of this my will, shall for the time being be in the actual possession or entitled to the receipts of the rents, issues, and profits of the said hereditaments and premises hereby devised in strict settlement, yet so that the same shall not vest absolutely in any person hereby made tenant in tail by purchase of the said hereditaments and premises, unless such person shall attain the age of twenty-one years; but on the decease of any such person being tenant in tail by purchase under or by virtue of this my will, shall go, devolve, and remain in the same manner as if they had been freeholds of inheritance, and had been included in the devise in strict settlement hereinbefore contained (*y*): AND I DIRECT that an inventory shall be made of the said pictures, prints, statues, maps, books, jewels, coins, medals, articles of virtù, plate, china, household goods and furniture, as soon as may be after my decease, and that two copies shall be made of the same, and that each of them shall be signed by the person for the time being entitled to the enjoyment thereof under the trusts aforesaid (if such person shall for the time being be of full age), and by the trustees or trustee for the time being of this my will, and that the said trustees or trustee for the time being shall see that the said pictures, prints, statues, maps, books, jewels, coins, medals, articles of virtù, plate, china, and household goods and furniture, are adequately insured against loss by fire (so far as the same are capable of being so insured), and properly preserved at the expense of the usufructuary thereof for the time being, but nevertheless the fashion and form of the said plate and jewels may from time to time be altered, the intrinsic value thereof being kept up. [*General bequest of personal estate to L. M. and N. O., their executors, administrators, and assigns in trust to convert the same into money, supra, p.* 7];

estates as heirlooms.

Direction for the safe custody, insurance, and preservation of the articles so bequeathed.

General bequest of personal estate to

(*y*) As to the settlement of personal chattels, so as to go along with freeholds limited in strict settlement, see ante, Vol. IV. p. 635, n. (*z*).

Settlement of personal chattels as heirlooms.

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AND DO AND shall, by and out of the monies to arise from such calling in, sale, and conversion into money, and the ready money of which I shall be possessed at my death, pay and discharge my funeral and testamentary expenses and debts, AND the legacy of £—— hereinbefore bequeathed to the said ——, and any legacy or legacies which I may bequeath by any codicil or codicils to this my will, AND purchase in their or his names or name £3 per cent. Bank Annuities, to such an amount as shall be sufficient, by means of the dividends thereof, to answer and satisfy the said annuities of £——, £——, and £—— hereinbefore given, and any annuities which I may give by any codicil or codicils to this my will, or such of them as shall be then subsisting and payable: AND DO AND SHALL hold the residue of the said monies, and also the monies to arise from the conversion into money of the said £3 per cent. Bank Annuities, as the said annuities of £——, £——, and £——, and the annuities to be given by any such codicil or codicils aforesaid, shall from time to time determine, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinbefore declared, expressed, and contained of and concerning the monies to arise from any sale to be made under the power of sale hereinbefore contained (*x*). [*Proviso, that until the annuities are provided for by investment, they may be paid out of the income or principal of the general personal*

trustees, upon trust to convert the same into money;

—and pay funeral and testamentary expenses, and debts and legacies; and purchase consols to satisfy the annuities;

Residue of such monies to be applied as those arising under the power of sale and exchange.

Usual clauses.

(*x*) The money to arise from any sale or exchange under the power of sale and exchange, is directed (see the form, infra, Precedent XIV.) to be laid out in the purchase of lands to be settled to the same uses as the devised estates; but with power to the trustees, instead of so laying it out, to apply it in discharge of incumbrances, and for other purposes convenient for the devised estate. The form in question, too, comprises a trust for investment of the money on usual securities till it can be applied for the proper purpose. Hence, whenever money derived from any other source is to be laid out in the purchase of lands to be settled to the same uses as the devised estates, the proper way to declare the trusts of such money is by a simple reference to the trusts declared of the money to arise under the power of sale and exchange, thereby avoiding the introduction of fresh trusts, and rendering the money in question at once applicable to every purpose to which money arising under the power of sale and exchange can be applied.

Direction that money shall be laid out in the purchase of land to be settled to the uses of estates devised; how to be made.

See another instance of this reference, supra, p. 143.

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estate, supra, p. 27—see p. 28, n. (i). Devise of trust and mortgage estates, supra, p. 13. Appointment of L. M. and N. O. to be executors, with power to arrange and compromise, supra, p. 14]. AND I HEREBY declare that the receipt and receipts in writing of the said L. M. and N. O., and the survivor of them, and the heirs, executors, and administrators of such survivor, or of the trustees or trustee for the time being acting in the execution of any of the trusts of this my will, for any sum or sums of money which may be paid by any purchaser or mortgagee, or which may otherwise become payable to them or him respectively under or by virtue of this my will, or in the execution of any of the trusts hereof, shall be a good and effectual discharge and good and effectual discharges for the money therein respectively acknowledged to be received, and shall to all intents and purposes discharge the person or persons taking such receipt or receipts, his, her, or their heirs, executors, or administrators, from seeing to the application, or being accountable or answerable for the misapplication or non-application of the same, or any part thereof. [*Power to appoint new trustees, supra, p. 15. Clauses for the indemnity of trustees, and the payment of their expenses, supra, pp. 17, 18 (c).*] IN WITNESS &c. (*d*).

Trustees' receipts to be discharges.

Trustee clauses.

Power of appointing new trustees, when there is more than one set.

(*c*) In the will in the text there is but one set of trustees, but generally in a will of real property, from terms being limited, there is more than one set of trustees, and when such is the case, the forms of appointing new trustees given in the next Precedent must be used.

The law and theory of remainders.

(*d*) The following note, which is referred to, supra, p. 131, note (*g*), and gives the leading principles of the theory and law of remainders with singular brevity and exactness, suggesting at the same time some novel views on the subject, is extracted from the Penny Cyclopædia, and is known to be the work of Mr. George Long, who, to his great eminence as a scholar, seems from this article well qualified to add the distinction of an accomplished lawyer. The Editor feels that he will be deemed to have done good service in transferring the article from a miscellaneous to a professional work.

Definition of a remainder;

"An estate in remainder is defined by Coke to be 'a remnant of an estate in lands or tenements, expectant on a particular estate, created together with the same at one time.' According to this definition, it must be an estate in lands or tenements, including incorporeal hereditaments, as rents and tithes; and it is an estate which at the time of its creation is

not an estate in possession, but an estate the enjoyment of which is deferred. The estate in remainder may exist in lands or hereditaments held for an estate of inheritance or for life. It must be created at the same time with the preceding estate, and by the same instrument; but a will and a codicil are for this purpose the same instrument. A remainder may be limited by appointment, which is an execution of a power created by the instrument that creates the particular estate; for the instrument of appointment is legally considered as a part of the original instrument. A remainder may also be created either by deed or by will; and either according to the rules of the common law, or by the operation of the Statute of Uses, which is now the more usual means.

—of a vested remainder;

"If a man seised in fee-simple grants lands to A. for years or for life, and then to B. and his heirs, B. has the remainder in fee, which is a present interest or estate, and he has consequetly a present right to the enjoyment of the lands upon the determination of A.'s estate; or, in other words, he has a vested estate, which is called a vested remainder. A reversion differs from a remainder in several respects. He who grants an estate or estates out of his own estate, retains as his reversion whatever he does not grant; and upon the determination of the estate or estates which he has granted, the land reverts to him. There may be several remainders and a reversion expectant on them. If A., tenant in fee-simple, limits his estate to B. for years, with remainder to C. for life, with remainder to D. in tail, this limitation does not exhaust the estate in fee-simple. By the limitation B. becomes tenant in possession for years, C. has a vested remainder for life, D. a vested remainder in tail, and A. has the reversion in fee. If the limitation by A. exhaust the whole estate, as it would have done in the preceding instance if the limitation had been to C. and his heirs, A. has no estate left. It is a necessary consequence that if a man grants all his estate, he can grant nothing more; and therefore the grant of any estate after an estate in fee-simple is void as a remainder. Indeed the word remainder implies that what is granted as such is either a part or the whole of something which still remains of the original estate.

—of a reversion;

—of a particular estate.

"The estate which precedes the estate in remainder or in reversion is called the *particular* estate, being a particula or portion of all the estate which is limited; and the particular estate may be any estate except an estate at will, and an estate in fee-simple. It must therefore be either an estate for years, or for life, or in tail.

How remainders must be created.

"Estates for years may be granted to commence at a future time; but by the rules of the common law, no estate of freehold can be created to commence at a future time. If therefore such an estate of freehold is granted, there must be created at the same time an estate for years, which shall continue till the time fixed for the enjoyment of the estate of freehold. If a freehold remainder expectant on an estate for years is created at common law, there must be livery of seisin to the tenant for years; for it is necessary that the freehold should pass to the grantee at the time of the grant, and the livery to the tenant for years enures to give a seisin to him to whom the estate of freehold is granted.

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"A remainder cannot be granted so as not to take effect immediately on the determination of the particular estate. If there is any interval left between the particular estate and the remainder in their creation, the remainder is absolutely void. A grant of an estate to A., and one day after the determination thereof to B., is a void remainder.

Remainders vested or contingent.

"Estates in remainder are either vested or contingent. The remainder may vest, at the time of the limitation, or it may vest afterwards: in either case the remainder-man acquires an estate in the land, to the enjoyment of which he is entitled upon the determination of the preceding estate. But it may happen that a vested remainder may never become an estate in possession.

Vested remainder.

"A vested remainder is an estate which, by the terms of the original limitation or conveyance, is limited or conveyed unconditionally. If a remainder is not vested, it is contingent.

Contingent remainder.

"A contingent remainder is defined by Fearne to be 'a remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate.' Accordingly, it is the limitation of the remainder which is conditional, and there is no remainder limited or given until the condition happens or is performed. The uncertainty of the remainder becoming an estate in possession, is no part of the notion of a contingent remainder; for this kind of uncertainty may exist, as already observed, in the case of vested remainders.

Classes of contingent remainders.

"Fearne has made four classes of contingent remainders, to some one of which he considers that all kinds of contingent remainders may be reduced, but he adds that 'several cases which fall literally under one or other of the two last of those four descriptions, are nevertheless ranked among vested estates.'

First class.

"The first class is, 'where the remainder depends entirely on a contingent determination of the preceding estate itself;' or, as it may be explained, where a remainder is limited to take effect only on the happening of a specified contingent event which is to determine the preceding estate, and is not to take effect if the preceding estate determines in any other way. An example usually given is the following:—A. makes a feoffment to the use of B. till C. returns from Rome; and after C.'s return, then to D. in fee. In this case B. has an estate which will determine either upon C.'s return from Rome or by his own death; but the remainder is limited to D. only upon the happening of a specified event which may never happen; and if B.'s estate determine by his death, or by forfeiture, which is possible, no estate is limited to D. There is then no limitation to D., except conditionally, and his estate is therefore contingent.

Second class.

"The second class is, 'where some uncertain event, unconnected with and collateral to the determination of the preceding estate, is by the nature of the limitation to precede the remainder.' This class is easily distinguised from the first, by the circumstance that the uncertain event upon which the remainder is limited, is entirely independent of the manner in

which the preceding estate may or must determine. The following is an example:—If a grant is made to A. for life, remainder to B. for life, and if B. die before A., remainder to C. for life, the uncertain event of B.'s dying before A. is quite independent of the determination of A.'s estate, but the limitation of C.'s estate depends on this uncertain event happening. OF LAND, AND MONEY TO BE LAID OUT IN LAND.

"In both these classes of remainders, the event on which the remainder is to take effect is absolutely uncertain; in the two following classes, the events on which the remainders are limited, are events which certainly must happen, and the contingency arises from the uncertainty of the time when they will happen.

"The third class is, 'where a remainder is limited to take effect upon an event, which, though it certainly must happen some time or other, yet may not happen till after the determination of the particular estate.' The following is an example:—A grant is made to J. S. for life, and after the death of J. D. the lands to remain to another in fee. Though it is certain that J. D. must die, this event, upon which the limitation in fee is to take effect, may not happen till after the determination of the life estate of J. S. Third class.

"The fourth class is, 'where a remainder is limited to a person not ascertained, or not in being at the time when such limitation is made.' The following is an example:—A grant is made to A. for life, remainder to the right heirs of J. S. Now, as J. S. can have no heir till he is dead, and as he may not die till after the determination of the particular estate, such remainder is contingent. If an estate is limited to two persons for life, with remainder in fee to the survivor, the remainder is contingent, because it is uncertain which will be the survivor. Fourth class.

"The first class of remainders mentioned by Fearne has sometimes been confounded with cases of conditional or contingent limitations, which, though not valid in conveyances at common law, are valid within certain limits in wills and in conveyances under the Statute of Uses. The distinction between the two things may be somewhat difficult to apprehend, but still there is a substantial distinction. Conditional limitations distinguished from contingent remainders.

"In the first class of remainders, the estate in remainder is limited to take effect as a remainder upon a determination of the preceding estate according to the original limitation: it does not defeat or abridge the preceding estate; but it is limited to commence when the preceding estate determines by the happening of that contingency which is originally declared to be a limit of its duration. In the case of conditional limitations, the event on which the conditional limitation is to take effect is an event independent of the measure of the previous estate, which measure is precisely ascertained by the terms of the original limitation. In the case of a contingent remainder, the second limitation takes effect as being a remnant which exists, and is capable of being limited over upon the contingent event taking place. If the first estate be limited in fee, as a limitation to the use of A. and his heirs till C. returns from Rome, and after the return of C., to the use of B. in fee, this limitation to B. cannot be a

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remainder; because the whole estate has been already limited, and there is nothing left to limit over. If the limitation is to A. for life, and if C. return from Rome, then to B. in fee, the life estate of A. may be defeated by the return of C., in which event B.'s estate commences, and is not merely a remnant limited on the expiration of A.'s life estate, but it comprises part of the estate limited to A.; it is therefore not a remainder according to the definition. Both these are cases of conditional limitation, by which an estate of a definite measure is limited, and upon the happening of some event which in no way affects the original measure of the preceding estate, that estate is to determine before its regular determination according to the original limitation, and the estate so conditionally limited is to take effect in possession. It follows from what has been said, that a remainder cannot take effect at common law so as to defeat or abridge the particular estate: a limitation having that effect would not be a remainder, but if limited at common law, would be void; and if limited by a will or by a conveyance to uses, it would take effect in another way.

Exception to the third class of contingent remainders.

"The exception to the third class of contingent remainders is of this kind. The event on which the remainder is limited over, is an event which must happen some time, and may happen after the determination of the particular estate; the remainder is therefore strictly contingent. But if the probability of the event happening after the determination of the particular estate is very small, the remainder is held to be vested. The following is an example:—a limitation to A. for eighty years, if B. shall so long live; and after the death of B., to C. in fee. In this case B., a person in being, may outlive the utmost limit of A.'s estate (eighty years); but the probability of this event is very small, and accordingly C.'s estate is held to be vested.

Exceptions to the fourth class of contingent remainders—rule in Shelley's case.

"The numerous exceptions to the fourth class of contingent remainders are comprehended in what is called the rule in *Shelley's case*, of which a complete exposition is given in Fearne's "Essay on Contingent Remainders; and in Preston's "Treatise on Estates," (vol. i.). The nature of this rule may be generally stated as follows:—If lands are limited, either by deed or will to a man for life, and after his death to his heirs or the heirs of his body, the limitation to the heirs would appear to be a contingent remainder according to the definition of the fourth class of contingent remainders, for the heirs are persons who cannot be ascertained till the death of the person to whom the estate for life is given. But it is an old rule of law, that the estate so limited to the heirs or the heirs of the body, takes immediate effect, as an estate in the ancestor, and therefore, in the former case, A., takes an estate of freehold with a vested remainder in fee. His life-estate is consequently merged in his remainder in fee, and he becomes tenant in fee-simple in possession. If an estate for life, or an estate tail, is interposed between the estate for life to the ancestor and the remainder to his heirs or the heirs of his body, still this remainder is vested in the ancestor, just in the same way as if it were

limited to him and his heirs, or to him and the heirs of his body. Thus, when A. takes an estate for life, remainder to B. for life, remainder to C. in tail, remainder to the right heirs of A., this ultimate remainder is a vested remainder in fee in A., and, after his death, and the determination of the intermediate estates, his heir will take by descent. But cases within this rule are not so properly exceptions, as cases which by the operation of the rule are excluded from the fourth class of contingent remainders.

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"There is another exception to the fourth class, which is allowed in devises, where it can be clearly inferred from the particular expressions in the will, that a limitation to the heir special of a person then living is intended as a designation of a particular person. In such case the remainder will vest; for the conclusion is, not that the testator intended to limit the estate by way of contingent remainder to such person as should be ascertained to be heir by the death of his ancestor, but that he intended by the word 'heir,' accompanied with the other expressions in the will, to designate a particular person.

"The following is an apparent exception to the first class of contingent remainders:—In settlements lands are often limited to the use of A. for life, and after the determination of that estate by forfeiture or otherwise in his lifetime, to the use of B. and his heirs during the life of A., in trust for A., and to preserve the contingent remainders; and after the death of A., to the use of the first and other sons of A. successively in tail male &c. This estate to the use of B., and his heirs during the life of A., is the estate given to trustees to support the subsequent contingent limitations; and in order that such estate to B. and his heirs may be sufficient for the purpose, it must be vested. Accordingly, it has long been held that this limitation gives the trustees a vested freehold estate, which will therefore support the contingent remainders. The reason given by Fearne for this estate being vested, is, that the trustees have a present capacity to take the estate whenever it becomes vacant. He observes, 'The present capacity of taking effect in possession, if the possession were to become vacant, and not the certainty that the possession will become vacant before the estate limited in remainder determines, universally distinguishes a vested remainder from one that is contingent.' (p. 216.)

Estate limited to trustees for the life of a tenant for life to preserve contingent remainders, is a vested remainder;

"If we adopt this test, it is clear that the limitation to trustees to preserve contingent remainders is not a limitation of that kind which is included in the first class of contingent remainders, for the limitations in remainder of that class are to take effect as limitations only on the happening of a specified contingent event, which determines the preceding estate, and not on the happening of other events which may, or must determine the preceding estate. If, then, a limitation over is to take effect on the happening of an uncertain event, and not on the happening of any other event, there is nothing limited as a remainder till the uncertain event has happened. But the estate to the trustees is so given as to take effect as a limitation upon any event happening, which shall determine

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the estate of A. in his lifetime. There is therefore a clear distinction between the two cases as to the capacity of taking effect in possession. But this capacity of taking effect in possession whenever the preceding estate becomes vacant, can hardly be used as a means of ascertaining whether the trustees have a vested estate. An estate is vested when there is either a present right of present enjoyment or a present right to a future enjoyment. A vested remainder is not the former, but it is the latter; the right is ascertained and the enjoyment is merely deferred. But the present right to a future enjoyment is a present capacity to enjoy whenever the time for enjoyment comes. Therefore a present capacity to enjoy, if the possession becomes vacant, is a vested remainder, and a vested remainder is a present capacity to enjoy, if the possession becomes vacant; but whether in a given case such present capacity or such vested remainder (which is the same thing) actually exists, is the matter to be determined. The rule then which is to be the test, whether a remainder is vested or contingent, is merely a description of a vested remainder in other and equivalent words; and the conclusion is, that a remainder is vested and not contingent when it is vested. Now, as the very notion of a contingent as distinguished from a vested remainder depends upon the limitation of the remainder being conditional or unconditional, it follows that there is no test of a contingent, as distinguished from a vested remainder, except by means of the words in which the limitation of the remainder is expressed.

"An estate to A. for life, with remainder to B. during the life of A., would be a void remainder, but for the legal possibility of A.'s estate being forfeited or surrendered in his lifetime. This legal possibility is also considered as one of the regular modes in which A.'s estate may determine, that is, as one of the modes by which it is liable to determine according to the nature of the original limitation. For if it is not so considered, the estate to B. is in the nature of a conditional limitation. Now, an estate might be limited upon the determination of A.'s life estate by forfeiture or otherwise in his lifetime, either for the period of A.'s life, or for a longer period than A.'s life, as for instance, to B. and his heirs. But such a limitation to B. and his heirs is in the form of a contingent remainder; for by the terms of the limitation, it is made upon a condition which may never be fulfilled; and there is a mode by which A.'s estate must determine, namely, his death, in which event nothing is limited to B. and his heirs. If the estate to B. and his heirs were limited upon any determination of A.'s estate in his lifetime, or upon the death of A., it would be a vested remainder; for it would be limited in all events, and therefore not conditionally limited. Now, the estate to the trustees to preserve contingent remainders during the life of A., only differs from such last-mentioned limitation in not containing any limitation upon the event of A.'s death. But a limitation to the trustees upon the event of A.'s death, is unnecessary for the purpose of giving a vested remainder; because the estate limited to the trustees determines with A.'s life. There

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is therefore no contingent event upon which the estate to the trustees during the life of A. is limited, but it is limited in all events, that is, unconditionally, and therefore it is not a contingent remainder.

"A difficulty arises from the form of the words in which the limitation is made, for the estate is limited upon the determination, &c., of A.'s estat , and these words apparently express a condition. But these words in themselves are not words of condition, any more than a limitation to A. for life, and upon his death to B. and his heirs. They merely denote the events, on the happening of which the estate is to take effect in possession. The events which are to determine the life estate of A., and upon which the limitation over is made, are not extrinsic events, such as the return of B. from Rome. A limitation over on the event of B.'s returning from Rome would be a conditional limitation to defeat A.'s life estate. But the events on which A.'s life estate may determine before his death, are events to which such an estate is incident; and these events may fix its measure, as well as the death of A. The estate to the trustees for the life of A., is therefore clearly an estate analogous in its limitation to an estate limited over on the death of A.; the only difference being, that A.'s death is an event that must happen, and the forfeiture, &c., are events which may happen. An estate limited over by way of remainder upon the happening of any of all the events by which the previous estate may determine, is clearly not a contingent remainder within any of the four classes defined by Fearne. But the estate to the trustees and their heirs generally, upon the determination of A.'s estate in his lifetime by forfeiture or otherwise, without adding 'during the life of A.,' is clearly conditional; for by the terms of the limitation, nothing is limited to the trustees except in the event of A.'s estate determining in certain ways in which it may determine, and nothing is limited in the event of its determining by his death, an event that must happen. It is not the words 'upon the determination of A.'s estate by forfeiture or otherwise in his lifetime,' which make the estate to the trustees and their heirs generally a limitation of a remainder upon a condition; but it is the circumstance of their estate being for a longer period than the life of A., and nothing being limited to them on the event of A.'s estate determining by his death, which renders the limitation conditional. This kind of contingent remainder is however hardly included in Fearne's first class; and it seems to form a fifth class of contingent remainders.

—and so also the estate of the trustee in the ordinary limitation to uses to bar dower.

"An estate similar to the estate to trustees to preserve contingent remainder occurs in the ordinary limitations to uses to bar dower in purchase-deeds, where, after the limitation to the purchaser for his life, and before the limitation of the fee, an estate is interposed to a trustee and his heirs during the life of the purchaser; the object being, by the interposition of a vested freehold remainder, to prevent the purchaser from taking such estate as will entitle his wife to dower. The like observations apply to this estate of the trustee to bar dower as to the estate of the trustees to preserve contingent remainders. This further observation applies to both

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estates: they fail to become estates in possession, not from any contingency attached to their limitation either in words or substance, but because the estates themselves expire before or at the same moment with the particular estate, a circumstance which never prevents a remainder from vesting. Thus, a limitation to A. for life, with remainder to B. for life, gives B. a vested remainder; and even if the limitation to B. were expresaly made 'in case he shall survive A.,' still the remainder to B. would be vested. The reason of this appears to be, that notwithstanding the words of contingency, there is no real contingency attached to the remainder, except that of its possible determination before the particular estate. The force of this observation will appear when it is considered, that a limitation to A. for life, with remainder to B. and his heirs in case he shall survive A., gives a contingent remainder to B., while, as already observed, a limitation to A. for life, with remainder to B. for life, in case he shall survive A., gives a vested remainder to B.

"The importance of this subject must be an apology for these remarks. The limitation to the trustees to preserve contingent remainders may, owing to carelessness or other causes, be expressed in terms different from what it ought to be. Thus the limitation might be to the trustees and their heirs, upon the determination of A.'s life-estate by forfeiture or otherwise *in his lifetime*, without the words 'during the life of A.;' or it might be to the trustees and their heirs upon the determination of A.'s life-estate by forfeiture or otherwise, without the words 'during the life of A.' In the former case the limitation would be contingent; in the latter, a vested remainder in fee would pass to the trustees and their heirs: in both cases the object of the settlement might fail to be secured.*

When limitations following a contingent remainder may be vested.

"A contingent remainder may intervene between the particular estate and other limitations over, and yet the subsequent limitations may be vested, if made to a person in esse, provided the contingent limitation is not in fee-simple. The contingent remainder itself may also vest, and then become an estate interposed between the particular estate and the subsequent vested limitations, if the contingency happens during the existence of the particular estate. If in the same conveyance an estate is limited to A. for life, followed by a contingent remainder and a subsequent limitation to A. and his heirs, or A. and the heirs of his body, this last limitation, though executed under the rule in *Shelley's case*, is still so executed as to allow the contingent remainder to interpose as a vested estate when the contingency happens. A subsequent contingent limitation may vest before a preceding one; but it follows from what has been said, that the preceding one is still capable of vesting.

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* "For this suggestion as to the nature of the estate limited to the trustees and their heirs without the words 'during the life of A.,' and for other valuable remarks, the writer is indebted to a learned friend."

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"Lands may be so limited as to be subject to a general power of appointment. In such cases, the general power of appointment will not prevent the estates limited in default of appointment from vesting; though the due exercise of the power will divest them.

"Certain cases in which a remainder is limited upon a contingency which affects the preceding estate, but does not affect the ulterior limitations, are discussed by Fearne (p. 233). The same section (x.) contains remarks on limitations which seem to import a contingency, but in fact only denote the time when the remainder is to vest in possession. These remarks seem to be applicable to the case of the trustees to preserve contingent remainders to whom an estate is limited during the life of the tenant for life, though this application of them is not made by Fearne.

On what events contingent remainders cannot be limited.

"A contingent remainder may be limited generally upon any event, except in such cases as the following:—the contingent event being illegal; the remote possibility of the contingent event; and the condition enuring to defeat the preceding estate. These subjects are fully discussed by Fearne (c. 2).

A contingent remainder of freehold must be preceded by a vested estate of freehold.

"It will be collected from what has been said, that a contingent remainder of freehold must be preceded by a vested estate of freehold; for if there is no precedent vested estate of freehold, and the freehold remainder is contingent, the freehold either remains in the grantor, and therefore is not transferred to any one else, or it is transferred in some remainder, which is limited after the contingent remainder, and which, being therefore vested in possession, precludes all possibility of the vesting of the contingent estate, which by the terms of the limitation must precede it. This rule as to the necessity of a vested freehold estate to support a contingent remainder, applies both to limitations of uses and of estates limited at common law. If the contingent remainder be for years, there is no necessity for a preceding freehold estate to support it: and when the legal estate is vested in trustees in trust, such legal estate in the trustees renders it unnecessary that a contingent remainder should vest during the continuance, or at the expiration of the preceding limitation in trust.

A contingent remainder must vest during the continuance of the particular estate;

"It will also appear from the definitions of contingent remainders, that they must vest, that is, the conditions on which they are limited must be fulfilled, during the continuance of the particular estate or immediately on its determination. One of the cases in which such remainders were formerly liable to fail under the fourth class of contingent remainders, was in the case of such limitations as to A., for life, and to his first and other sons in tail. Originally a posthumous son could not take; but such child is now for this and several other purposes considered as a person in esse, during the period of pregnancy. When a contingent remainder is limited to several in a conveyance to uses or by a devise, such remainder will vest in the first person in whom it can vest, but it will divest in due proportions in favour of other persons who are included in the limitations, and who become capable of taking before the determination of the particular

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estate; and such persons may take as joint tenants, though their estates vest at different times.

"Any determination of the particular estate before a legal remainder vests, must, consistently with what has been said, destroy the contingent remainder. The contingent remainder may fail, not only through the contingency not happening till after the expiration of the particular estate, but through its destruction by the surrender of the tenant for life, or by the forfeiture of his estate during the existence of the contingency. The intermediate contingent remainder will also be destroyed, if the particular estate, and the next vested estate of freehold become united by the conveyance or act of the parties, so that the particular estate be merged. This, however, is not the case when the particular estate with a contingent remainder over and the inheritance are limited by the same instrument; for though the estate in the inheritance is executed, this does not prevent the contingent remainder from vesting upon the happening of the condition on which it depends.

—and fails on the expiration or destruction of that estate.

Descent, devise, and assignment of contingent remainders.

"A contingent remainder of an estate of inheritance is descendible to the heirs of an ascertained person to whom it is limited, if such person should die before the contingency happens, and it will vest if the same should happen during the continuance of the particular estate. Contingent remainders were once not considered devisable, but it was afterwards determined that they were deviseable whenever they were descendible to the heirs of the persons to whom they were limited; and under the recent statute (1 Vic. c. 26), they are devisable in common with all contingent, executory, or other future interests in any real or personal estate.

"Contingent remainders are not assignable at law, though capable of being bound by a contract in equity. They were also capable of being bound by a fine by way of estoppel. By the Irish act for the abolition of fines and recoveries, there is a provision for the assignment at law of contingent estates. There is no corresponding provision in the English act; and as fines are abolished, and a contingent estate is confessedly incapable of being dealt with at law, and a married woman is incapable of contracting, a doubt (perhaps not well founded) exists whether a deed acknowledged by a married woman will bind her contingent remainder even in equity.

Limitation of alternative fees.

"Though a fee cannot be limited after a fee as a remainder, two or more contingent fees may be limited in the alternative, so that one only shall take effect.

Limitation of quasi remainders in chattels real and personal.

"Interests in chattels real and personal are susceptible of limitations over after the limitation of some partial interest in them; but from the nature of those interests, they are incapable of such extensive modifications as freehold interests in land, and they cannot be operated upon by the Statute of Uses. Originally, a bequest of a term of years to a man for his life, was an absolute gift of the whole term, and the donee might dispose of the whole interest as he pleased; but at present, a bequest of such term to A. for life, and after his death to B., is a bequest of the whole term

to A., subject to an executory bequest to B., to take effect if A. dies before the expiration of the term. It is not a particular estate to A. for life and a remainder to B. Any disposition of a chattel, which in the case of lands would make an estate tail, gives the whole interest. Thus, if the second bequest of the term of years were to B. and the heirs of his body, B. would take the whole interest. OF LAND, AND MONEY TO BE LAID OUT IN LAND.

An executory devise is such a limitation of a future estate in lands, and an executory bequest is such a limitation of a future interest in chattels, as are allowed in the case of a will, though not in conveyances at common law. Accordingly, a fee may be limited after a fee in a will, or by way of use upon contingencies which may happen within certain limits of time; and such limitations take effect as executory devises, or springing or shifting uses. But when future estates are so limited by devise as to be comprehended within the rules which apply to contingent remainders, they will be considered as such, and not as executory devises. Executory devises and bequests.

The subject of contingent remainders is fully discussed in the elaborate Essay of Fearne on *Contingent Remainders and Executory Devises*; see also Hayes *On Conveyancing*, Appendix.

XIII.

WILL *of* REAL *and* PERSONAL *Estate.* DIRECTION *that the Testator's* ESTABLISHMENT *shall be kept up for one Year for the Benefit of his Wife.* BEQUEST *of* READY MONEY *for the Payment of Debts, &c.* DEVISE *of a* HOUSE *to such of certain* FEMALES *as shall be* LIVING UNMARRIED *and* RESIDE *in it.* DEVISE *of* CERTAIN REAL *Estate to Trustees for a* TERM *of Years, to pay Interest on Debts—subject thereto, that* WIFE *may take a* RENT-CHARGE *with Usual Powers—and that* TTUSTEES *may take a* RENT-CHARGE *for the Benefit of the beforementioned* UNMARRIED FEMALES—*subject thereto to Trustees for a* TERM *of Years, to* SECURE *the* RENT-CHARGES *and pay the* OF LAND TO BE SOLD FOR BUILDING PURPOSES.

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STAMP DUTY *thereon—subject thereto to several* SUCCESSIVE TENANTS *for* LIFE, *with remainders to their* SONS *and their* DAUGHTERS *successively* IN TAIL. NAME *and* ARMS' *Clause.* TENANTS *for* LIFE *to* RESIDE *in the* MANSION HOUSE—*and to* KEEP *the Property in* GOOD ORDER—*and* NOT *to* FELL TIMBER *except in certain cases.* POWERS *of* LEASING, *and of* SALE, *and* EXCHANGE. DEVISE *of* REAL *Estate in trust for* SALE, *with various* SPECIAL POWERS *and* DIRECTIONS *to facilitate selling the same for* BUILDING *Purposes.* PURCHASE-MONEY *to be applied in aid of the Money before bequeathed for Payment of Debts, &c., and in exoneration of the general Personal Estate.* POWER *to raise Money by* MORTGAGE. SURPLUS MONEY *to be laid out in the Purchase of* LANDS *to be settled.* RENTS *and Profits till Sale of the Lands to be sold, to go as those of the Lands, to be purchased and settled.* POWER *to* SELL *in consideration of* FEE-FARM RENTS *reserved.* SPECIAL TRUSTS *of personal Chattels directed to go with the settled Estate as* HEIR-LOOMS. GENERAL BEQUEST *of Personal Estate to the Person who shall be the first Tenant for Life of the settled Estate.* POWER *to appoint* NEW TRUSTEES. CLAUSES *for the* INDEMNITY *of* TRUSTEES *and the* PAYMENT *of their Expenses.*

I, A. B., of &c., do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and do declare this to be my last will and testament. I GIVE to my dear wife, C. B., the sum of £——, to be paid to her within one calendar month after my decease (*a*). I ALSO GIVE to my said wife such one of my carriages, and such

Gift to the testator's wife of pecuniary and specific legacies.

(*a*) See supra, p. 3, n. (*b*).

one pair of my carriage-horses, with harness for the same, as she may choose, for her own absolute use and benefit. AND I HEREBY DIRECT that my said wife shall have the free and undisturbed use of my mansion-house of ——, and of the gardens, pleasure-grounds, coach-houses, stables, and other appurtenances thereunto belonging, and of the home-farm now in my occupation, with the appurtenances, and of all the plate, linen, china, books, furniture, wine, stores, household goods, carts, carriages, horses, cows, farming and other implements, live and dead stock, which shall be in or about my said mansion-house and farm at the time of my death, (except my racing stud, and such farming produce as may be prepared for sale), for one year from the time of my death: AND THAT during such year, all parliamentary and other taxes, rates, charges, assessments, and outgoings, payable in respect of the said mansion-house and farm, and the wages of all servants employed in or about the said house, gardens, and farm establishment, and all the house-keeping and farming expenses of every kind, shall be paid and defrayed out of my general personal estate; and that my said wife shall take for her own use the produce of my said farm during the said year. I GIVE AND BEQUEATH all the ready money which at the time of my death shall be in my mansion-house at —— aforesaid (*b*), and all the money which shall be standing in my name in my banker's account, to my nephew, X. Y., his executors and administrators, UPON TRUST that he or they do and shall pay and apply the same in or towards payment of my funeral and testamentary expenses and debts (including any debts secured on mortgage of any part of my estates in ——,) and of the said legacy to my said wife, and any legacies which I may bequeath by any codicil or codicils to this my will; AND DO AND SHALL hold the surplus (if any) which shall remain after answering and satisfying the purposes aforesaid, upon the trusts hereinafter declared of the residue of my personal estate. I GIVE AND DEVISE my house, called the

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Direction that the wife shall have the enjoyment of the mansion-house and home-farm for one year from the testator's death; and that all expenses during that time shall be paid out of the testator's general estate.

Gift to testator's nephew of ready money and money at banker's, in trust to pay funeral and testamentary expenses and debts, including mortgage debts on certain estates and legacies.

Devise of a

(*b*) See, supra, p. 114, n. (*b*).

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——, at ——, in the county of ——, now in the occupation of my aunt ——, and the gardens, out-buildings, lands, and appurtenances held therewith, or thereunto belonging, to the use of E. F., of &c., G. H., of &c., and I. K., of &c., their executors, administrators and assigns, during such time as my said aunt, and her six daughters, my cousins, or any of them, shall live without being married, and shall reside in the said house, or make my said house their or her ordinary chief place of residence, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, do and shall permit such of them, my said aunt and cousins, as shall for the time being be living without being married, to occupy the said house and premises rent-free, they or she keeping the same in proper order and repair, and adequately insured against loss by fire, and paying all rates and taxes payable in respect thereof (*c*). I GIVE AND DEVISE my said mansion-house of ——, situate in the parish of ——, in the city of ——, with the coach-houses, stables, outbuildings, gardens, pleasure-grounds, farms, and lands thereunto belonging, or therewith held, (or such part or parts thereof as are freehold of inheritance), with their rights, easements, and appurtenances, and all and every other the manors, messuages, lands, tenements, hereditaments, and real estate situate in the said parish of ——, and elsewhere, in the counties of —— and ——, being freehold of inheritance, of or to which I am now or at the time of my death shall or may be seised or entitled, either at law or in equity, for any devisable estate or interest, or of which I now have power to dispose by this my will (except what I otherwise devise or dispose of by this my will, or any codicil hereto, but including the reversion of the said house and premises at ——, hereinbefore devised for the benefit of my said aunt and her daughters, and subject as to the said mansion-house, home-farm, and their respective appurtenances, to the direction

house and lands to trustees, in trust to permit such of certain females as shall for the time being be living unmarried to occupy the same.

General devise of real estate in certain counties.

(*c*) See another declaration of trust of this nature, supra, p. 110, et seq.

hereinbefore contained for the enjoyment thereof by my said wife for one year from my death), To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same: that is to say; To THE USE of the said E. F., G. H., and I. K., their executors, administrators, and assigns, for the term of five hundred years, to commence from the time of my death, without impeachment of waste, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same: AND FROM and after the expiration or sooner determination of the said term of five hundred years, and in the mean time subject thereto, and to the trusts thereof, TO THE USE AND INTENT that my said wife and her assigns shall and may yearly during her life, or during so long as she shall continue my widow, receive and take one annual sum or yearly rent-charge of £—— to be charged upon and yearly issuing and payable out of the said hereditaments and premises hereinbefore devised, and to be paid by equal half-yearly payments, on the —— day of——, and the —— day of ——, without any deduction or abatement whatsoever, the first half-yearly payment of such annual sum or yearly rent-charge of £——, to be made on such of the said days of payment as shall happen next after my decease; AND TO THIS FURTHER USE AND INTENT, that in case and when and so often as the said annual sum or yearly rent-charge of £——, or any part thereof, shall be unpaid by the space of twenty-one days next after any of the days hereby appointed for payment thereof as aforesaid, then and so often it shall be lawful for my said wife and her assigns to enter into and distrain upon the same hereditaments and premises, or any part thereof, and to dispose of the distress and distresses then and there found, according to law: to the intent that thereby or otherwise the said annual sum or yearly rent-charge of £——, and every part thereof, and all costs and expenses occasioned by the reason of the non-payment thereof, shall be fully paid and satisfied: AND TO

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To the use of trustees for five hundred years;

Subject thereto,

To the use that the testator's wife may receive a rent-charge during her widowhood;

—with power of distress,

—and of entry.

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THIS FURTHER USE AND INTENT, that in case the said annual sum or yearly rent-charge of £——, or any part thereof, shall at any time or times be unpaid by the space of forty days next after any of the days hereby appointed for the payment thereof, then and so often (although there shall not have been any legal demand made thereof) it shall be lawful for my said wife and her assigns to enter into, and upon, and hold the said hereditaments and premises, or any part thereof, and to receive and take the rents, issues, and profits thereof, to her and their own use, until she or they shall thereby or otherwise be fully paid and satisfied the same annual sum or yearly rent-charge of £——, and the arrears thereof due at the time of such entry, or afterwards to become due during her or their being in possession of the same premises, together with all costs and expenses which she or they shall sustain by reason of the non-payment thereof, and such payment when taken shall be without impeachment of waste (*d*), AND SUBJECT to the said annual sum or yearly rent-charge of £——, and the powers and remedies for recovering and compelling payment thereof, TO THE USE AND INTENT, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, shall and may

Subject thereto,

To the use that while certain females, or any of them, are living un-

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Rent-charges —how to be created and secured when given by will.

(*d*) With respect to the powers and remedies annexed to rent-charges, see ante, Vol. 4, p. 504, n. (*k*), p. 577, n. (*c*). It is not usual in wills to limit a term for further securing rent-charges, although in the Precedent in the text that course is followed, probably from the special nature of the second rent-charge. If the annual sums to be paid are numerous and small, it is best not to limit them as rent-charges, with separate powers of distress and entry, but in the first instance to limit a term to trustees, upon trust to raise and pay them. In this case they may be given as annuities simply (ut supra, p. 129), and the trusts of the terms be declared to raise and pay them; or the gift may be incorporated in the trust itself. The former method is the simplest and best, and the trusts of the terms will then run as in the Precedent in the text, infra, p. 171, omitting the words in brackets. See a limitation of several rent-charges to a class of persons, infra, Precedent XIV., and of a rent-charge varying in amount on different events, infra, Precedent XV. See, too, ante, Vol. 4, p. 502 et seq., and pp. 576, 577.

receive and take during so long as my said aunt and my said six cousins, or any of them, shall live without being married, and reside in the said house in —— as hereinafter is mentioned, one annual sum or yearly rent-charge of £——, clear of legacy duty and of all other deductions and abatements whatsoever, to be yearly issuing and payable out of the same hereditaments and premises as are hereinbefore charged with the said annual sum or yearly rent-charge of £——, and to be paid and payable by equal half yearly payments on the same days as are hereinbefore appointed for payment of the said annual sum or yearly rent-charge of £——, the first of the said half-yearly payments of the said annual sum or yearly rent-charge of £—— to be made on such of the said days of payment as shall first happen after my death, in case the said annual sum or yearly rent-charge of £—— shall be then subsisting or capable of taking effect, and the said annual sum or yearly rent-charge of £——, to be attended with the same powers and remedies for recovering and compelling payment thereof by distress, and entry upon and perception of the rents, issues, and profits of the said hereditaments and premises, as are hereinbefore limited and given with respect to the said annual sum or yearly rent-charge of £——, and to be paid and applied upon and for the trusts, intents, and purposes, and in manner hereinafter declared and expressed(*e*); AND SUBJECT to and charged with the said annual sums or yearly rent-charges of £—— and £——, and the powers and remedies for recovering and compelling payment thereof, TO THE USE of P. Q., of &c., and R. S., of &c., their executors, administrators, and assigns, for the term of one hundred years, to commence from the day of my death, without impeachment of waste, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same: AND FROM and after the expiration or sooner determination of the said term of one hundred years,

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married, trustees may receive an annual rent-charge, to be attended with the same powers, &c.

Subject thereto,

To the use of trustees for one hundred years:

Subject thereto,

(*e*) See, supra, note (*d*).

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and in the mean time subject thereto and to the trusts thereof, To THE USE of my first and other sons severally and successively, according to their respective seniorities, in tail, WITH REMAINDER TO THE USE of my first and other daughters severally and successively, according to their respective seniorities, in tail; AND FOR DEFAULT of such issue, To THE USE of my nephew X. Y., and his assigns, for his life, without impeachment of waste (except as is hereinafter mentioned); AND AFTER the determination of that estate by any means in his lifetime, To THE USE of L. M., of &c., and N. O., of &c., and their heirs, during the life of my nephew, the said X. Y., Upon trust to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions, as occasion shall require, but to permit and suffer the said X. Y., and his assigns, during his life, to receive and take the rents, issues, and profits of the same premises for his and their own use; AND AFTER the decease of the said X. Y., To THE USE of the first and other sons of the said X. Y. severally and successively, according to their respective seniorities, in tail, WITH REMAINDER to the use of the first and other daughters of the said X. Y. severally and successively, according to their respective seniorities, in tail; AND FOR DEFAULT of such issue, to the use of my said niece D. C., and her assigns, for her life, without impeachment of waste (except as is hereinafter mentioned); AND AFTER the determination of that estate by any means in her lifetime, To THE USE of the said L. M. and N. O., and their heirs during the life of the said D. C., In trust, by the ways and means aforesaid, to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, but to permit and suffer the said D. C., and her assigns, during her life, to receive and take the rents, issues, and profits of the same premises for her and their own use; AND AFTER the decease of the said D. C., To THE USE of the first and other sons of the said D. C. severally and successively, according to their respective seniorities, in tail, WITH REMAINDER TO THE USE of the first and other daughters of the said D. C. severally and successively, according

To testator's sons and daughters successively in tail;

—to testator's nephew for life;

—to trustees for the life of the nephew, to preserve contingent remainders;

—to his sons successively in tail;

—to his daughters successively in tail;

—to testator's eldest niece for life;

—to trustees for her life to preserve contingent remainders;

—to her sons successively in tail;

—to her daughters successively in tail;

to their respective seniorities, in tail; AND FOR DEFAULT of such issue, TO THE USE of my said &c. [*Limitations for life and in tail to several other persons, male and female, and their sons and daughters, as in the two previous cases, with the corresponding trusts to preserve contingent remainders; in one case, however, the life estate of a married woman being devised to the trustees for her separate use, as in the last Precedent, supra, p.* 130]: AND FOR DEFAULT of such issue, TO THE USE of my kinsman ——, and the heirs of his body, with remainder TO THE USE of my own right heirs: AND I HEREBY DECLARE that the said hereditaments and premises are hereinbefore limited to the said E. F., G. H., and I. K., their executors, administrators, and assigns, for the said term of five hundred years, Upon trust that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall from time to time, by and out of the rents, issues, and profits of the said hereditaments and premises, or by bringing actions against the tenants or occupiers of the same premises (*f*), levy and raise any sum or sums of money which shall be necessary, or which they, the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall, in their or his discretion, think expedient to levy and raise for the payment of all such part and so much of the interest as the rents, issues, and profits of the said hereditaments hereinafter devised in trust for sale shall be insufficient to defray as well of the debts which shall be due or owing by me at my death, and which shall bear interest, as of the sum or sums of money (if any) which shall be raised by any of the trustees under this my will, in pursuance of any of the powers herein contained, of raising money by way of mortgage, either of the hereditaments hereinbefore devised

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—to a man in tail;

—to the testator's right heirs.

Trusts of the term of five hundred years:

—out of the annual produce to raise sufficient to pay the interest of the testator's debts;

(*f*) It will be observed, that the trusts of this term being confined to the payment of interest on debts, are also confined to the annual produce of the land. See the trusts of a term declared in aid of the personal estate for payment of debts and funeral and testamentary expenses, infra, Precedent XIV.

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in settlement, or of the hereditaments hereinafter devised in trust for sale: AND I HEREBY FURTHER DECLARE, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, shall apply the monies to be levied and raised by the ways and means aforesaid, or any of them, in or towards payment of all such part and so much as aforesaid of the interest of the said debts, and of the said sum or sums of money to be raised as aforesaid accordingly: AND I HEREBY FURTHER DECLARE, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, to sign and give receipts in writing for the sum or sums of money so to be levied and raised by them or him, under the trusts of the said term of five hundred years; and that the persons paying the same, and taking such receipts as aforesaid, shall not be answerable or accountable for any loss, misapplication, or non-application of the same, or be in anywise bound or concerned to see to the application thereof, or to ascertain that the sum proposed to be levied and raised is actually wanted for the purpose aforesaid, or otherwise as to the propriety or regularity of such transaction: PROVIDED ALWAYS, and I hereby declare my will to be, that when the trusts hereinbefore declared of and concerning the said term of five hundred years shall have been fully performed or satisfied, or have become unnecessary or incapable of taking effect, and the said E. F., G. H., and I. K., and each of them, their and each of their executors and administrators, shall have been fully reimbursed and satisfied all costs and charges (if any) to be occasioned by or relating to the trusts hereby reposed in them as aforesaid, (and which they are hereby authorized and empowered to levy and raise by all or any of the ways and means aforesaid, and to retain accordingly), the said term of five hundred years shall absolutely cease and determine (*g*): AND I HEREBY DECLARE, that the said heredita-

—and apply the same accordingly.

Trustees' receipts to be discharges for money so raised.

Proviso for cesser of the term.

Trusts of the

(*g*) As to framing provisoes for cesser of terms, see ante, Vol. 4, p. 508, n. (*m*). As the trusts of the present terms do not permit any dis-

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ments and premises are hereinbefore limited to the said P. Q. and R. S., their executors, administrators, and assigns, for the said term of one hundred years, UPON TRUST that the said P. Q. and R. S., and the survivor of them, and the executors and administrators of such survivor, [do and shall permit and suffer the person or persons who, under or by virtue of this my will, shall for the time being be entitled in reversion or remainder, immediately expectant on the said term of one hundred years, to the said hereditaments and premises therein comprised, to receive and take the rents, issues, and profits of the same premises until default shall be made in payment of the said annual sums or yearly rent-charges of £——, and £——, or one of them, or some part of one of them, at the times and in manner hereinbefore appointed for the payment thereof respectively, or of some sum which shall be payable for legacy duty, upon the said annual sums or one of them: AND UPON FURTHER TRUST that if the said two several annual sums or yearly rent-charges of £—— and £——, or any one of them, or any part of any one of them, shall at any time or times be behind or unpaid by the space of forty days next after any one of the said days whereon the same respectively are hereinbefore appointed to be paid, then and in such case, and so often as the same shall happen, the said P. Q. and R. S., or the survivor of them, or the executors or administrators of such survivor (*h*)], do and shall from time to time, by and out of the rents, issues, and profits of the said hereditaments and premises comprised in the said term of one hundred years, or by demising or mortgaging the same premises, or any part thereof, for all or any part of the said term, or by bringing actions against the tenants or occupiers of the same premises, or any of them, for recovery of the rents and profits thereof, or by more than by one, or by all, of

term of one hundred years: —to permit the reversioner to take the rents and profits till default in payment of one of the rent-charges, or of the legacy duty thereon;

—and if the rent-charges are unpaid, to raise and pay them;

position of the corpus of the estate, the proviso for cesser omits the usual clause protecting such dispositions. See the proviso for cesser, infra, p. 173.

(*h*) As to the omission, in certain cases, of the words in brackets, see supra, p. 166, n. (*d*).

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the ways and means aforesaid, or by any other reasonable ways and means, levy and raise the said several annual sums or yearly rent-charges of £—— and £——, or such of them as shall be so in arrear as aforesaid, and all arrears thereof which shall be then due and unpaid, or which shall afterwards during their or his continuance in possession accrue of the same respectively, and all costs, damages, and expenses which my said wife, her executors, administrators, or assigns, and the said P. Q. and R. S., or either of them, or either of their executors, administrators, or assigns, shall respectively be put unto or sustain by reason of the non-payment thereof, or in receiving and obtaining payment thereof, or otherwise relating thereto: AND UPON FURTHER TRUST, that if the legacy duty on the said annual sum or yearly rent-charge of £—— shall not be duly paid by the person or persons for the time being entitled in reversion or remainder as last aforesaid (*i*), the said trustees or trustee for the time being of the said term of one hundred years do and shall, by all or any of the ways and means aforesaid, or by any other reasonable ways or means, levy and raise such sum or sums as shall be required for legacy duty on the annual sum or yearly rent-charge of £——, when and as the same shall be wanted, and apply the same in discharge of such legacy duty accordingly: AND UPON FURTHER TRUST, that they the said P. Q. and R. S., and the survivor of them, and the executors or administrators of such survivor, do and shall pay the surplus (if any) of the

—and if the legacy duty be not paid, to raise and pay the same,

—and pay the surplus to the reversioner;

Payment of legacy duty on legacies and annuities payable out of real estate.

(*i*) By the statute 45 Geo. 3, c. 28, sects. 4 & 5, confirmed by the statute 55 Geo. 3, c. 184, the duties on legacies and annuities payable out of real estate are to be paid by the trustee or other person entitled to the real estate, and retained out of the legacy or annuity. See *Attorney-General* v. *Jackson*, 2 Cro. & Jer. 101; S. C. 2 Tyr. 50; 1 Price, P. C. 178: *Stow* v. *Davenport*, 5 B. & Ad. 359; 2 Nev. & Man. 805: *Attorney-General* v. *Pickard*, 3 Mee. & Wels. 552; S. C., in error, nom. *Pickard* v. *Attorney-General*, 6 Mee. & Wels. 348; Williams' Law of Executors, Part III. book v. ch. 3; Collins on the Stamp Laws, p. 388. There is no legacy duty payable on the first rent-charge in the text, being to the wife of the testator. See further, as to the payment of legacy duties, supra, p. 21, n. (*a*).

monies to be raised by the ways or means aforesaid, to the person or persons for the time being entitled in reversion or remainder, immediately expectant upon the determination of the said term of one hundred years as aforesaid: AND SUBJECT to the trusts aforesaid, do and shall from time to time permit and suffer the rents, issues, and profits of the said hereditaments and premises comprised in the said term of one hundred years, or such part or parts thereof as shall not for the time being be wanted for the purposes for which the same term is hereby created, to be had, received, and taken by the person or persons who, under or by virtue of these presents, shall for the time being be entitled in reversion or remainder, immediately expectant on the determination of the same term, to the premises therein comprised: PROVIDED ALWAYS, and I hereby declare my will to be, that when the trusts hereinbefore declared of and concerning the said term of one hundred years shall have been fully performed or satisfied, or have become unnecessary or incapable of taking effect, and the said P. Q. and R. S., and each of them, their and each of their executors, administrators, and assigns, shall have been fully reimbursed and satisfied all costs, charges, and expenses (if any) to be occasioned by or relating to the trusts hereby reposed in them as aforesaid, and which they and he are hereby authorized and empowered to levy and raise by all or any of the ways or means aforesaid, or by any other reasonable ways or means, and to retain accordingly, the said term of one hundred years shall (subject and without prejudice to any disposition which shall have been made of the said premises comprised therein, or any part thereof, in pursuance of the trusts aforesaid) absolutely cease and determine (*j*): PROVIDED ALWAYS, and I hereby declare my will to be, that every person who, under or by virtue of [the limitations hereinbefore contained, or of this proviso, or any other proviso in] this my will, shall become entitled to the possession, or to the receipt of the rents and profits of the hereditaments and premises hereinbefore devised in settlement, shall and do, within the space of one

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—and subject to the trusts of the terms, allow the reversioner to take the rents and profits.

Proviso for cesser.

Name and arms of the testator alone (except in the case of a peer or peeress) to be taken by every devisee, and the hus-

(*j*) As to provisoes for cesser, see ante, Vol. IV. p. 508, n. (*m*), and supra, p. 170, n. (*g*).

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year next after he or she shall so become entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises, if he or she shall then be of full age, and if he or she shall be under age, then, within one year next after he or she shall attain the age of twenty-one years, and also that every person who shall marry any female who shall be or become entitled to the possession or to the receipt of the rents and profits of the said hereditaments and premises, shall and do, within the space of one year next after his wife shall so become entitled, or he shall so marry as aforesaid, whichever shall last happen, take upon himself or herself, and use in all deeds, letters, and writings, and upon all other occasions, the surname of B. alone, and no other surname (unless such person be a peer or peeress, and then the surname of B., together with and either before or after his or her family name, and together with the title of his or her peerage), and also take, use, and bear the arms of B. and X., quartered together with his or her family arms; and also shall and do, within the space of one year next after he or she shall so become entitled as aforesaid, or next after he or she shall attain the age of twenty-one years (as the case may be), apply for and endeavour to obtain an act of Parliament, or license from the Crown, or take such other means as may be requisite, to enable and authorize him or her to take, use, and bear the surname of B. (either alone or jointly, as the case may be), and the arms of B. and X., quartered together with his or her family arms as aforesaid: PROVIDED ALWAYS (*k*), nevertheless, and I hereby declare my will to be,

Bond of every female devisee coming into possession.

Temporary change of name by marriage of

Name and arms' clause: provision in case of a female marrying.

(*k*) In the proviso relative to the change of name and arms in the last Precedent, supra, p. 132, et seq., this clause is wanting, and it seems not to be necessary here; for there can be little doubt that, after marriage, the wife might continue to use her maiden name, so as to comply with the proviso. The forms in the last Precedent, supra, p. 132, et seq., appear to be more neatly framed than those in the text, and to be better adapted for common use; but as the object of the two forms is not precisely the same, it has been deemed best to retain both.

A form adapted to the simpler case of a settlement in the male line only, will be found in Precedent XIV, infra.

For some observations on clauses of this nature, see supra, p. 133, n. (*i*), p. 136, n. (*l*).

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that the temporary change of name occasioned by the marriage of any female who shall be or become entitled as aforesaid, or any other circumstance which may be legally incident to such marriage, shall not be deemed or taken to be a non-compliance with the aforesaid direction, or a discontinuance to use and bear the name and arms aforesaid, provided that the husband of every such female shall comply with the direction hereinbefore contained, and which is applicable to him, or in case he shall die without having so complied, but before the expiration of the time which is allowed for making such compliance as aforesaid, and his wife, in case she shall survive him for twelve calendar months, shall take the proper steps for assuming the name and arms aforesaid, and shall use the same as hereinbefore is directed: PROVIDED ALSO, and I hereby further declare my will to be, that in case any such person as aforesaid shall refuse or neglect to take, use, and bear such surname and arms as aforesaid, in manner aforesaid, and to take such means as may be requisite or proper to enable and authorize him or her so to do within the time hereinbefore in that behalf directed, then from and after the expiration of such time the limitations hereinbefore contained of the said hereditaments and premises, to or for the benefit of him or her, or to or for the benefit of the wife of him so refusing or neglecting, shall cease, determine, and become utterly void; and the said hereditaments and premises shall in such case, and immediately thereupon, devolve to the person next in remainder, under the limitations hereinbefore contained, in the same manner as if such person so refusing or neglecting, or whose husband shall so refuse or neglect, being tenant for life, either at law or in equity, were dead, or being tenant in tail, were dead without issue: AND I HEREBY FURTHER DECLARE my will to be, that every person (not a peer or peeress) who, under or by virtue of [the limitations hereinbefore contained, or of this proviso, or any other proviso in] this my will, shall become entitled to the possession or to the receipt of the rents and profits of the said hereditaments and premises hereinbefore devised in settlement, and who shall be above the age of twenty-one years, and

a female devisee not to be deemed a discontinuance to bear the name.

The estate of any person failing to take the name and arms to be forfeited.

Mansion-house of testator to be the residence of every devisee in possession.

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every person (not being a peer) who shall marry any female who shall be or become so entitled, shall and do, at all times thereafter, make my said mansion-house at —— their principal place of residence, and shall not be absent therefrom more than —— at any one time, or more than —— in any one year, unless such absence shall be rendered necessary or desirable on account of the health of any person so entitled as aforesaid, or on account of the health of any wife, husband, or child of any person so entitled: PROVIDED ALSO, and I hereby further declare my will to be, that if any such person as aforesaid shall not make my said mansion-house at —— their principal place of residence, or shall be absent therefrom for more than ——, or more than —— in any one year, at any one time (except in the cases aforesaid), then and immediately thereupon the limitations hereinbefore contained of the said hereditaments and premises, to or for the benefit of him or her, or to or for the benefit of the wife of him who shall so act, shall cease and determine, and become utterly void, and the said hereditaments and premises shall in such case, and immediately thereupon, devolve to the person next in remainder, under the limitations hereinbefore contained, in the same manner as if such persons so acting as aforesaid, or whose husband shall so act as aforesaid, being tenant for life, either at law or in equity, were dead, or, being tenant in tail, were dead without issue (*l*): PROVIDED ALWAYS, and I hereby declare my will

The estate of any devisee failing to reside to be forfeited.

On the forfeiture of the

As to a direction that devisees shall reside in a particular mansion-house.

(*l*) It is unnecessary to point out the absurdity of the two last provisoes, especially of that which makes forfeiture the penalty of non-residence. Among other inconveniences they would (unless a very long absence is permitted) prevent the devisee in possession of the estate from sitting in Parliament. The following expression of desire is all that any testator ought to insert in his will:—

"And I hereby declare it to be my particular wish and desire (but not so as to make it compulsory) that my capital messuage or mansion-house of —— aforesaid, shall be the principal place of residence of the person for the time being entitled to the possession thereof, under or by virtue of this my will."

to be, that the cesser or determination by force of either of the provisoes hereinbefore contained of the estate of any person hereinbefore made tenant for life, either at law or in equity, with remainder to his or her issue as aforesaid, shall not operate to exclude, prevent, or prejudice any of the contingent uses or estates hereinbefore limited to his or her sons or daughters, or to any other person or persons, but that the estate limited to the said L. M. and N. O., and their heirs, during the lifetime of such legal or equitable tenant for life, shall, after such cesser or determination, take effect, or continue for preserving such contingent uses or estates, and giving them effect as they may arise; AND THAT immediately from and after such cesser or determination of such estate for life, and during such suspense and contingency of such then expectant remainder, the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, shall receive, pay, and apply the rents and profits which would belong to such legal or equitable tenant for life, of the said hereditaments and premises, if such cesser or determination had not taken place, unto the person to whom the same rents and profits would be or would have been payable, under or by virtue of this my will, in case such tenant for life were actually dead, so that immediately from and after such cesser and determination the issue of such tenant for life, entitled for the time being under the limitations aforesaid to the said hereditaments in remainder immediately expectant on the death of such tenant for life, may be entitled to the rents and profits of the said hereditaments during the life of the parent, as if such parent were actually dead; and that in case no such issue, entitled as aforesaid, shall be in existence then during the vacancy or contingency of such issue, the person next entitled for the time being, under or by virtue of this my will, to a vested remainder, expectant on the death of such tenant for life, and such failure of issue of his or her body, shall be entitled to the said rents and profits, but without any exclusion of or prejudice to the estate, interest, or right of any such issue afterwards coming into existence, but only

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estate of any tenant for life, the estate of the trustees for his life to take effect to preserve the contingent remainders;

—and for the benefit of the person for the time being next entitled in vested remainder.

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until the birth of such issue (*m*): PROVIDED ALWAYS, and I hereby declare my will to be, that every person who, under or by virtue of this my will, shall, for the time being, be in the possession, or entitled to the receipt of, the rents and profits of the said hereditaments and premises hereinbefore devised for an estate for his or her life, either at law or in equity, shall, at his or her own costs and charges, at all times during his or her life respectively, well and sufficiently maintain, amend, and keep, or cause to be kept, in good and sufficient order and repair, the said capital, and other messuages, farm-houses, houses, outhouses, edifices, and buildings, and all and singular other the premises hereinbefore devised, and every part thereof, and the appurtenances thereof; and shall, at the like costs and charges, keep or cause to be kept all the said capital and other messuages, farm-houses, and buildings adequately insured against loss or damage by fire; and in case any of the said capital or other messuages, farm-houses, or buildings shall be destroyed or damaged by fire, and any money shall be received from any insurance office on account thereof, then do and shall lay out, or cause to be laid out, the whole of such money (after deducting necessary expenses), as soon as conveniently may be, in rebuilding or repairing the messuages and buildings which shall have been so destroyed or damaged: PROVIDED ALSO, and I hereby declare my will to be, that no person who, under or by virtue of this my will, shall, for the time being, be in the possession of or entitled to the receipt of the rents and profits of the said hereditaments and premises hereinbefore devised, for an estate for his or her life, or any less estate, shall fell or cut down any timber or timber-like trees, unless the same be required for the purpose of erecting or making houses, edifices, buildings,

Tenants for life in possession to keep the premises in repair, and insured against fire.

Tenants for life not to fell timber except for repairs or improvements;

Forfeiture of life estates; —proviso protecting charges previously created.

(*m*) It is usual and proper to insert a proviso for the protection of charges and leases made by a tenant for life before forfeiture; see supra, pages 134, 135, and infra, Precedent XIV. The clause in p. 134, however, may be safely omitted, that in p. 135 being preserved. Both clauses were omitted in this will, probably on account of its containing no power of charging, and a presumption that leases at any rate would not be affected by a subsequent forfeiture.

gates, stiles, fences, or other works, in or upon or about some part of the same lands, tenements, and hereditaments, or for the reparation, amendment, enlargement, or improvement of some of the houses, outhouses, edifices, or buildings, gates, stiles, fences, or works, which now are, or at my death shall be, standing or being upon some part of the same hereditaments and premises: PROVIDED ALWAYS, nevertheless, and I hereby declare my will to be, that it shall be lawful for any person or persons who shall, for the time being, be entitled as aforesaid to fell and cut down any timber or timber-like trees, which any two respectable surveyors shall, by writing under their hands certify, to be of such age or in such state that they will probably deteriorate by being allowed to remain standing: PROVIDED ALWAYS, and I declare my will to be, &c. [*Proviso that the trustees to preserve contingent remainders, shall manage the estates during the minorities of any persons for the time being entitled in possession, supra, p.* 141, *et seq., the power to fell timber being varied thus:*—"with such power to fell timber as the person, during whose minority such possession is held, would have under this my will, if then of full age."] AND I HEREBY DECLARE my will to be, that the said E. F., G. H., and I. K., their executors and administrators, do and shall stand and be possessed of and interested in the said annual sum or yearly rent-charge of £——, upon trust that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall, from time to time, as and when the same shall be received, pay the said annual sum or yearly rent-charge of £—— unto my said aunt, during such time as she shall continue unmarried, and reside in the house at —— aforesaid, as her ordinary chief place of residence; and from and after the death of my said aunt, or her marriage, or her ceasing to reside in the house at —— as aforesaid, (whichever shall first happen,) unto my said cousins —— and ——, or such of them as shall, for the time being, be living and unmarried, and shall reside in the said house at ——, as their or her ordinary chief place of residence, to be divided amongst them, if more than one, in

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—or timber which will injure by standing.

Trusts during minorities of devisees.

Trustees of the rent-charge to hold the same in trust for the unmarried females living in the house previously devised to them.

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equal shares (*n*): PROVIDED ALSO, and I hereby declare my will to be, that it shall be lawful for the said [*the several tenants for life, except the one whose life interest is settled for her separate use*], (and for such of them as shall be married women, notwithstanding coverture), as and when, under or by virtue of this my will, they, or the husbands of such of them as shall be married women in their respective rights, shall successively and respectively be in the actual possession, or entitled to the receipt, of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised; and also to and for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, as and when, under or by virtue of this my will, the said —— [*the tenant for life, whose estate is limited to her separate use,*] shall actually be entitled to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised; and also from time to time, and at all times during the minority of any person who, under or by virtue of this my will, shall be entitled in possession to any estate of freehold and inheritance of and in the said hereditaments and premises hereinbefore devised, by any indenture or indentures, &c. [*Power of leasing for twenty-one years, infra, Precedent XIV.*] (*o*).

Power of leasing.

Power of sale and exchange.

PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, at any time or times after my death, at the request and by the direction of any person who, or, being a female, whose husband, for the time being, shall, under or by virtue of this my will, be in the possession, or entitled to the receipts, of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised as tenant for life at law or in equity, and who shall

(*n*) See trusts for a similar object, supra, pp. 110, 111.

(*o*) Compare the introduction to this power with that to the power, supra, p. 143, and with those to the leasing powers, in Precedent XIV, infra.

have attained the age of twenty-one years, and if such person be a married woman, notwithstanding coverture, (such request and direction to be testified by some writing sealed and delivered by him or her in the presence of, and attested by, two or more credible witnesses,) to dispose of and convey, &c. [*Power of sale and exchange, infra, Precedent XIV., the purchases being to be made* "with the consent in writing of the person who would, under, or by virtue of this my will, be tenant for life or tenant in tail in possession, either at law or in equity, of the hereditaments so to be purchased, if such person shall then have attained the age of twenty-one years, (such consent to be effectual notwithstanding coverture), but if such person shall be then under the age of twenty-one years, then every such purchase shall be made at the discretion of the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor (*p*)."] I GIVE AND DEVISE &c. [*General devise of real estate in certain places (ut supra, p.* 164) *to L. M. and N. O., their heirs and assigns, in trust for sale, supra, p.* 6.] PROVIDED ALWAYS, and I hereby declare my will to be, that upon any sale or sales which may be made in pursuance of the trusts hereinbefore contained of the said hereditaments lastly hereinbefore devised, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, (in all or any cases in which the same shall be thought advisable or proper,) to make such sale or sales, with, under, and subject to any covenants or stipulations to be entered into or made by or on the part of the purchaser or purchasers, to build upon, lay, and set out, rail, inclose, embank, fence, drain, or otherwise improve (in such manner as may be agreed upon) the lands to be purchased by him or them respectively, or any part thereof,

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

General devise of real estate in trust for sale.

Power to the trustees to sell, subject to stipulations, for building on, or improving or laying out, the lands taken by the purchasers;

(*p*) Compare this introduction with that to the power supra, p. 144; and with that to the power of sale and exchange, in Precedent XIV., infra. In the will in the text, the exercise of the power is confined to the times when a tenant for life is in possession, and is not extended, as in Precedent XIV., to the minority of a tenant in tail.

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

equal shares (*n*): PROVIDED ALSO, and I hereby declare my will to be, that it shall be lawful for the said [*the several tenants for life, except the one whose life interest is settled for her separate use*], (and for such of them as shall be married women, notwithstanding coverture), as and when, under or by virtue of this my will, they, or the husbands of such of them as shall be married women in their respective rights, shall successively and respectively be in the actual possession, or entitled to the receipt, of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised; and also to and for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, as and when, under or by virtue of this my will, the said —— [*the tenant for life, whose estate is limited to her separate use,*] shall actually be entitled to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised; and also from time to time, and at all times during the minority of any person who, under or by virtue of this my will, shall be entitled in possession to any estate of freehold and inheritance of and in the said hereditaments and premises hereinbefore devised, by any indenture or indentures, &c. [*Power of leasing for twenty-one years, infra, Precedent XIV.*] (*o*). PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, at any time or times after my death, at the request and by the direction of any person who, or, being a female, whose husband, for the time being, shall, under or by virtue of this my will, be in the possession, or entitled to the receipts, of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised as tenant for life at law or in equity, and who shall

Power of leasing.

Power of sale and exchange.

(*n*) See trusts for a similar object, supra, pp. 110, 111.

(*o*) Compare the introduction to this power with that to the power, supra, p. 143, and with those to the leasing powers, in Precedent XIV, infra.

have attained the age of twenty-one years, and if such person be a married woman, notwithstanding coverture, (such request and direction to be testified by some writing sealed and delivered by him or her in the presence of, and attested by, two or more credible witnesses,) to dispose of and convey, &c. [*Power of sale and exchange, infra, Precedent XIV., the purchases being to be made* "with the consent in writing of the person who would, under, or by virtue of this my will, be tenant for life or tenant in tail in possession, either at law or in equity, of the hereditaments so to be purchased, if such person shall then have attained the age of twenty-one years, (such consent to be effectual notwithstanding coverture), but if such person shall be then under the age of twenty-one years, then every such purchase shall be made at the discretion of the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor (*p*)."] I GIVE AND DEVISE &c. [*General devise of real estate in certain places (ut supra, p.* 164) *to L. M. and N. O., their heirs and assigns, in trust for sale, supra, p.* 6.] PROVIDED ALWAYS, and I hereby declare my will to be, that upon any sale or sales which may be made in pursuance of the trusts hereinbefore contained of the said hereditaments lastly hereinbefore devised, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, (in all or any cases in which the same shall be thought advisable or proper,) to make such sale or sales, with, under, and subject to any covenants or stipulations to be entered into or made by or on the part of the purchaser or purchasers, to build upon, lay, and set out, rail, inclose, embank, fence, drain, or otherwise improve (in such manner as may be agreed upon) the lands to be purchased by him or them respectively, or any part thereof,

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

General devise of real estate in trust for sale.

Power to the trustees to sell, subject to stipulations, for building on, or improving or laying out, the lands taken by the purchasers;

(*p*) Compare this introduction with that to the power supra, p. 144; and with that to the power of sale and exchange, in Precedent XIV., infra. In the will in the text, the exercise of the power is confined to the times when a tenant for life is in possession, and is not extended, as in Precedent XIV., to the minority of a tenant in tail.

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

and to contribute towards the expenses of making and keeping in repair, ornamenting, and embellishing any squares or other open places, now or hereafter to be laid out and made in any part or parts of the said lands and hereditaments lastly hereinbefore devised, and of making and keeping in repair any ways, sewers, drains, or other conveniences, now or hereafter to be laid out and made in, upon, over, through, or under any part or parts of the same lands and hereditaments, or any roads or ways, sewers, drains, or other conveniences which shall be purchased, or the use or enjoyment whereof shall be purchased, by virtue of the power for that purpose hereinafter given, or with, under, or subject to any of such covenants or stipulations:

—and to reserve rights of way and other easements over the lands sold;

AND THAT it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, upon any such sale or sales of any part or parts of the said lands and hereditaments lastly hereinbefore devised, to reserve the right of making and laying out any roads, sewers, ways, drains, or other easements and conveniences, in, upon, over, or under the lands to be sold, or any part or parts thereof, at the time of sale, or at any subsequent time or times to be fixed upon by them or him, and to reserve any rights of road at the time of sale, or at any subsequent time or times to be fixed upon by them or him, or any rights of using any sewers or drains, or any other rights, easements, or conveniences, in, upon, over, through, or under the lands

—and to grant rights of road and other easements over the unsold lands to the purchasers;

to be sold, or any part thereof; AND TO GRANT unto the purchaser or purchasers of any part or parts of the said hereditaments and premises lastly hereinbefore devised, any rights of road, or of making or using any areas in or upon any other part or parts then remaining unsold of the same premises, or of using any roads, sewers, drains, or other conveniences which, or the right or enjoyment of which, shall have been reserved through, over, under, in, or upon any part or parts of the same lands which shall have been sold, and to grant unto such purchaser or purchasers any rights of road, or other easements which shall have been purchased by the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, under or by virtue of

the powers for that purpose hereinafter given, or to grant unto such purchaser or purchasers the right of using or enjoying any of the same rights of road or other easements; AND THAT it shall be lawful for the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, upon any such sale or sales as aforesaid, to stipulate and agree with the purchaser or purchasers of any part or parts of the said lands and hereditaments as to the mode in which any part or parts of the said lands and hereditaments which shall then remain unsold shall be built upon, laid out, used, or improved; AND GENERALLY, that any sale or sales under the power hereinbefore contained shall or may be made with, under, and subject to such covenants, restrictions, stipulations, agreements, rights, easements, and conveniences, as by the said trustees or trustee for the time being shall be considered to tend to the general improvement or advantage of the said lands and hereditaments lastly hereinbefore devised, or to the improvement or advantage of any part or parts thereof. PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, at any time or times after my decease, to set out, allot, and appropriate any part or parts of the said lands and hereditaments lastly hereinbefore devised, either including or excluding the sites of all or any of the houses, erections, or buildings which at the time of my death may be standing thereon, as and for squares or other open spaces, ways, roads, streets, avenues, passages, drains, sewers, reservoirs, watercourses, or other easements and conveniences, and to make and form the said lands so set out, allotted, and appropriated as aforesaid, into squares, or other open spaces, ways, roads, streets, avenues, passages, drains, sewers, reservoirs, watercourses, or other easements and conveniences; AND ALSO to divide the said lands and hereditaments lastly hereinbefore devised into such lots and in such way and manner as shall be thought most beneficial, and also to fence and inclose all or any of the lots into which the said lands shall be so divided as aforesaid; AND ALSO to grub up, cut, and take down all or any of the hedges,

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

—and to stipulate with purchasers as to mode of building and improvement;

—and generally to sell, subject to any stipulations which the trustees may consider for the advantage of the lands.

Power to the trustees to appropriate lands for squares, roads, &c.;

—and to lot and fence lands;

—and cut down fences and timber;

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

fences, timber, and other trees and underwood respectively growing and standing on the said lands and hereditaments, or on any part or parts thereof; AND ALSO to take down and remove any of the houses, buildings, and erections which, at the time of my death, may be standing on the said lands; AND either to sell and dispose of, either together or in parcels, and either by public auction or private contract, all or any of the materials composing all or any of the houses, buildings, hedges, fences, and erections which shall be so taken down and removed, and also all or any of the said timber and other trees and underwood which shall be so cut down; OR to use and apply the said materials, timber, and other trees and underwood, or any part or parts thereof respectively, in such manner as shall be thought most beneficial for effectuating the objects and purposes of this my will, or any of them; AND ALSO to sell and dispose of, either together or in parcels, or by public auction or private contract, all or any of the materials composing any house or houses, building or buildings, or other erection or erections which, at the time of my death, may be standing on the said hereditaments, with such provisions for pulling down the house or houses, building or buildings, or other erection or erections, the materials whereof shall be sold and disposed of, and removing the materials thereof, as shall be thought proper; and also to level all or any part of the said lands lastly hereinbefore devised; and also to remove and fill up, arch over, cover in, stop, and divert any mounds, pits, dykes, ditches, ponds, drains, or water courses, in or upon the said lands lastly hereinbefore devised; and also to dig, sell, and dispose of all such gravel, sand, brick-earth, clay, and stone, and other earth, soil, or mineral, as it shall be found convenient to remove for effecting any of the objects and purposes of this my will; AND GENERALLY, from time to time, to manage, alter, and improve the said lands, hereditaments, and premises lastly hereinbefore devised, or any of them, or any part thereof, in such manner as shall, by the said trustees or trustee for the time being, be thought most advantageous to the persons beneficially interested therein. AND I HEREBY FURTHER DECLARE my

—and pull down buildings;

—and to sell wood and materials;

—or apply the same for the purposes of the will;

—and to sell buildings to be pulled down;

—and to level lands, and dispose of gravel, &c.;

—and generally to manage and improve the lands.

Power to trus-

will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, by, with, and out of any monies which shall come to their or his hands as such trustees or trustee as last aforesaid, to purchase from the owner or owners of any lands adjoining or near unto any of the said lands, hereditaments, and premises lastly hereinbefore devised, any rights of road or other easements over, in, upon, or under any such lands so adjoining or near unto any of the said lands, hereditaments, and premises lastly hereinbefore devised; AND to sell to any such owner or owners, or to any person or persons who shall have previously purchased any part of the lands or hereditaments lastly hereinbefore devised, or their several or respective heirs or assigns, for such price or prices as to them the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, shall seem reasonable, any rights of road or other easements over, in, upon, or under any of the said lands lastly hereinbefore devised, or any rights of road or other easements which shall have been previously purchased by the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, under the authority of this present power, or the right of using or enjoying any of the last-mentioned rights of road or other easements; AND to grant unto any person or persons who shall have previously purchased any part of the lands lastly hereinbefore devised, or their several and respective heirs, appointees, or assigns, any rights of road or other easements over, in, upon, or under any of the said lands lastly hereinbefore devised, and for the time being remaining unsold, or any rights of road or other easements which shall have been previously purchased by the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, or the right of using or enjoying any of the last-mentioned rights of road or other easements, either in consideration of the purchaser or purchasers entering into such covenants with the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, as shall be agreed upon, to repair and keep in proper order and condition, or to contribute such sum or proportion as shall be

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

tees to purchase easements over adjoining lands.

—and to sell such easements and new easements over the devised lands;

—and to grant easements to purchasers of land, either for money or in consideration of covenants to keep the easements in order;

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

agreed on for or towards keeping in repair, proper order, and condition, the roads, sewers, drains, or other easements or conveniences, the use or enjoyment whereof shall be so granted, or in consideration of such purchaser or purchasers paying unto the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, a sum or sums of money by way of purchase-money, and also covenanting, in manner hereinbefore mentioned, to repair and keep in proper order and condition, or to contribute towards keeping in repair, proper order, and condition, the said roads, sewers, drains, or other easements or conveniences, the enjoyment whereof shall be granted; AND to exchange with any such owners of adjoining lands any rights of road or other easements or conveniences over, in, upon, or under any of the said lands lastly hereinbefore devised, for any rights of road or other easements or conveniences over, in, upon, or under any lands adjoining or near unto the said lands lastly hereinbefore devised, and upon every or any such exchange as aforesaid, to give or receive any sum or sums of money for equality of exchange. AND I DECLARE my will to be, that the said L. M. and N. O., and the survivor of them, and the heirs, executors, and administrators of such survivor, do and shall, either in exercise of the trusts or powers hereinbefore contained, or any of them, or otherwise, as the case may require, do all such acts as shall be necessary for performing any covenants or agreements already entered into, or which shall hereafter be entered into, by me in respect of the said hereditaments and premises lastly hereinbefore devised, or any of them, or any part thereof. AND I HEREBY DECLARE my will to be, that upon payment of the money arising from any sale or sales of the said hereditaments and premises lastly hereinbefore devised, or of any such rights or easements as aforesaid, or of any money to be received for equality of exchange as last aforesaid, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, to sign and give receipts for the same, and that such receipts shall be sufficient discharges to the person or persons to whom the same shall

—and to exchange easements.

Trustees empowered generally to fulfil the testator's engagements in respect of these lands.

Trustees' receipts to be discharges.

be given for the money therein respectively acknowledged or expressed to be received, and that such person or persons, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application thereof. AND I HEREBY FURTHER DECLARE my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, to apply for an act of Parliament for the purpose of making the benefit and the burthen of all or any of the covenants which may theretofore have been entered into either by me or the said trustees or trustee for the time being, with any purchaser or purchasers, or by such purchaser or purchasers with me, or the said trustees or trustee for the time being, and also the benefit and the burthen of all or any of the covenants which may thenceforth be entered into by the said trustees or trustee for the time being, with any purchaser or purchasers, or by such purchaser or purchasers with the said trustees or trustee for the time being, run with the land, and also for the purpose of obtaining such additional facilities for carrying into effect the trusts, intents, and purposes of this my will, as to them the said trustees or trustee for the time being shall seem meet; and I declare, that the costs and expenses of applying for any such act of Parliament, and of obtaining the same (if it be obtained) shall be paid as part of the expenses incident to the trusts of this my will (*q*). AND I HEREBY FURTHER DECLARE my will to be, that the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, do and shall stand and be possessed of and interested in the money to arise from the sale

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

Trustees empowered to apply for an act of Parliament to enable them better to effectuate the preceding trusts.

Trusts of the purchase-money and other monies received under the preceding trusts;

(*q*) The clause in the text can hardly be deemed to give the trustees any additional power; but it may be useful, as shewing the testator's intention, if any discussion arise as to the conduct of the trustees in applying for an act. The first clause, viz. to alter the operation of covenants entered into before the passing of the act, would not, it is presumed, be allowed to pass without the consent of the parties affected.

Authorities to trustees of a will to apply for an act of Parliament.

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

or sales of the hereditaments and premises lastly hereinbefore devised, or of any such rights or easements as aforesaid, and of and in any money to be received for equality of exchange as last aforesaid (after deducting therefrom all costs, charges, and expenses attendant upon such sales or exchanges, or in anywise incurred in or incident to the trusts or powers aforesaid, or any of them), UPON TRUST that they and he do and shall by and out of the said monies pay and discharge all such and such parts of my funeral and testamentary expenses and debts (including the debts secured by mortgage on any part of my said estates in ——), and of the said legacy hereinbefore bequeathed to my said wife, and of the legacies which I may bequeath by any codicil or codicils hereto, as the ready money which at the time of my death shall be in my mansion-house aforesaid, and standing in my name in my banker's account, shall be insufficient to pay and discharge, it being my intention to exonerate and discharge all the remainder of my personal estate from payment of my funeral and testamentary expenses and debts, and the legacies aforesaid, and to charge the same on the purchase-money arising from the sale or sales as aforesaid: PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, to raise any sum or sums of money which may be required for the purpose of executing or carrying into effect any of the trusts or powers of this my will, either with reference to the said hereditaments and premises lastly hereinbefore devised, or the hereditaments and premises hereinbefore devised in settlement as aforesaid, by mortgage of the said hereditaments and premises lastly hereinbefore devised, or any of them, and to pay off such mortgages out of the monies to arise from any sale of any part of the same hereditaments and premises; and no person lending money on such security to the said trustees or trustee for the time being, shall be in anywise concerned to see to the application thereof, or to ascertain whether such money or any part of it is required for the purposes aforesaid, or otherwise as to the propriety or regularity of such transactions: AND I HEREBY DECLARE

—to pay such of the funeral and testamentary expenses, debts, and legacies, as the money bequeathed for that purpose shall be insufficient to pay, and in exoneration of the general personal estate.

Power to the trustees to raise money by mortgage, to be discharged out of the purchase-money.

Surplus pur-

my will to be, that the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, do and shall stand and be possessed of and interested in the surplus which shall remain of the monies to arise from the sale or sales of the said hereditaments and premises hereinbefore devised in trust for sale, or of the rights and easements aforesaid, or to be received for equality of exchange as last aforesaid, after answering and satisfying all the trusts and purposes aforesaid, upon and for the trusts, intents and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinbefore expressed and declared of and concerning the money to arise from any sale of the said hereditaments and premises hereinbefore devised in settlement, or any part thereof, in pursuance of the power of sale thereof hereinbefore contained (*r*): AND I HEREBY DECLARE my will to be, that, in the mean time, and until the said hereditaments, real estate, and premises hereinbefore devised in trust for sale shall have been sold, the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, do and shall pay and apply the rents, issues, and profits thereof, or of so much thereof, as shall for the time being remain unsold, (after payment thereout of all rates, taxes, premiums for insurance against loss by fire, costs of repairs, and other outgoings, which any tenant or tenants of the same hereditaments, real estate, and premises, or of any part thereof, or any other person or persons shall not be liable to pay, and after payment also thereout of the funeral and testamentary expenses, debts, and legacies hereinbefore directed to be paid out of the monies to arise by sale of the same premises, and the interest of the sums hereby authorized to be raised by mortgage of the same premises), to the person or persons, for the purposes, and in the manner to, for, and in which the rents, issues, and profits of the hereditaments to be purchased by the surplus which shall remain as aforesaid of the money arising from any such sale as last aforesaid, in pursuance of the trusts hereinbefore declared by

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

chase-money to be held upon the trusts of money arising from a sale under the power of sale of the settled estate.

Rents and profits till sale to go as the income of the lands to be purchased and settled.

(*r*) See supra, p. 149, n.

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

reference as aforesaid, would go or be payable or applicable in case such sale and purchase and settlement as aforesaid were then actually made: PROVIDED ALWAYS, and I hereby further declare my will to be, that as soon as my funeral and testamentary expenses, debts, and legacies, and any sums raised by mortgage as aforesaid, shall have been fully paid and discharged, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the heirs of such survivor, to sell and convey all or any part of the said hereditaments and premises hereinbefore devised in trust for sale, either wholly in consideration of an annual ground rent or fee-farm rent to be reserved out of or charged and secured on the land to be conveyed, or partly in consideration of such a rent and partly of a gross sum of money, all such rents to be reserved or charged and secured, and to be made payable in such manner as to the said trustees or trustee for the time being shall seem expedient: PROVIDED ALWAYS, nevertheless, and I hereby declare, that no person who may become the purchaser of any part of the said last-mentioned hereditaments and premises, in consideration either wholly or partly of such a rent a saforesaid shall be bound to see or inquire whether my funeral and testamentary expenses, debts, and legacies, and such mortgage sums as aforesaid, have been previously paid and discharged. AND I HEREBY FURTHER DECLARE my will to be, that all ground rents and fee-farm rents which shall be taken as the consideration or part consideration for the purchase of the said last-mentioned hereditaments and premises, or any of them shall, as soon as conveniently may be, be sold by the said L. M. and N. O., or the survivor of them, or the heirs of such survivor, in such manner and with such powers and discretions in every respect as are hereinbefore mentioned and contained with respect to the said hereditaments and premises hereinbefore devised in trust for sale, and that the said trustees or trustee for the time being shall stand and be possessed of and interested in the monies to arise from such sales or sale, (so far as circumstances may admit and require); upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and

Power to sell in certain events, in consideration of ground or fee-farm rents to be reserved.

Purchasers exonerated from seeing that such events have happened.

The rents so reserved to be sold as the land.

declarations hereinbefore expressed and declared of and concerning the said gross monies to arise from the sale of the said hereditaments and premises hereinbefore devised in trust for sale as aforesaid. I GIVE AND BEQUEATH unto my said wife, for her absolute use and benefit, all my jewels and trinkets, excepting only my diamonds and the settings thereof: AND I GIVE AND BEQUEATH all my diamonds and the settings thereof, and also all the pictures, prints, books, plate, linen, glass, china, household goods, and furniture, which at my death shall be in or about my said capital messuage or mansion-house at —— aforesaid (*s*), unto the said L. M. and N. O., their executors, administrators, and assigns, UPON TRUST that the said L. M. and N. O., and the survivor of them, and the executors and administrators of such survivor, do and shall permit the said diamonds and the settings thereof to be used and enjoyed by my said wife during her life: AND DO AND SHALL permit the said diamonds and the settings thereof, from and after the death of my said wife, and the said pictures, prints, books, plate, linen, glass, china, household goods and furniture, from and immediately after my death, to go along with &c. [*as heir-looms, supra, p.* 148.] AND I HEREBY DIRECT that one inventory shall be made of my said diamonds and the settings thereof, and another of my said pictures, prints, books, plate, linen, glass, china, household goods and furniture, as soon as may be after my decease, and that two copies shall be made of each of the said inventories, and that both copies of each of the said inventories shall be signed by the person for the time being respectively in possession of my said diamonds, and of the said pictures, prints, books, plate, linen, glass, china, household goods and furniture, under or by virtue of this my will, and by the said trustees and trustee for the time being thereof, and that one of each of the said copies shall be kept by the said trustees or trustee for the time being, and the other copy of the said inventory of the said diamonds

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

Bequest of jewels, except diamonds.

Bequest of diamonds and personal chattels to go as heir-looms, except that the wife is to have the diamonds for her life.

Direction to make inventories of,

(*s*) As to the effect of the words in the text, see supra, p. 95, n. (*g*); and as to the gift by reference to the locality of the chattels at the testator's death, see supra, p. 3, n. (*a*).

OF LAND TO BE SOLD FOR BUILDING PURPOSES.

shall be kept by my said wife during her life, and the other copy of the inventory of the said pictures, prints, books, plate, linen, glass, china, household goods and furniture, and also the said other copy of the inventory of the said diamonds, after the death of my said wife, shall be kept at my said mansion-house at —— aforesaid (*t*). AND I HEREBY DECLARE my will to be, that the said trustees or trustee for the time being shall see that the said diamonds, pictures, prints, books, jewels, plate, linen, glass, china, household goods and furniture are properly preserved at the expense of the usufructuary thereof for the time being: PROVIDED ALWAYS, nevertheless, and I hereby declare, that it shall be lawful for the usufructuary for the time being of the said plate, linen, glass, china, household goods and furniture, with the consent of my said trustees or trustee for the time being, to replace or exchange any of the said plate, linen, glass, china, or household goods and furniture, with or for other articles of the same or a like nature and of equal o greater value, and to alter the fashion of the said plate so that the intrinsic value thereof be not diminished: AND I HEREBY DECLARE my will to be, that no such usufructuary as aforesaid shall be bound to replace any such of the said articles and things as shall be lost or destroyed by accident (otherwise than by fire), or shall be worn out or destroyed in the ordinary course and from the reasonable wear and tear thereof: AND I HEREBY FURTHER DECLARE my will to be, that each usufructuary for the time being of the said diamonds, plate, pictures, prints, books, linen, glass, china, household goods, and furniture, shall insure and keep insured against loss and damage by fire in some public insurance office in London or Westminster, in an adequate sum, all such and so many of the said articles and things as are for the time being in existence, and all such articles and things as shall be substituted in the place of any of the articles and things

—and see to the due preservation of the heir-looms.

Power to replace and exchange any of the heir-looms for similar articles;

—but articles lost or worn out not to be replaced.

Heir-looms to be adequately insured against loss by fire.

(*t*) See the more simple direction as to the inventory, *supra*, p. 148. The usual direction (if any) as to the copy not kept by the trustees is, that it shall be kept by the usufructuary thereof for the time being.

hereinbefore bequeathed; and in case any of the said articles and things so insured shall be destroyed or damaged by fire, and any money shall be received from any insurance office on account thereof, then the whole of such money (after deducting necessary expenses) shall, as soon as conveniently may be, be laid out in replacing or repairing the articles which may have been so destroyed or damaged. AND I HEREBY FURTHER DECLARE my will to be, that any articles or things which in pursuance of any of the directions contained in this my will shall be substituted in the place of any of the articles and things hereinbefore bequeathed, shall be specified from time to time in inventories to be made and kept by the persons and in manner hereinbefore mentioned with respect to the inventories of the articles hereinbefore bequeathed, and all such articles and things so substituted are to be in every way subject to the same trusts and provisions as are hereinbefore declared and contained with respect to the articles and things hereinbefore bequeathed: PROVIDED ALWAYS, and I hereby declare my will to be, that the said trustees, or any of them, shall not be personally answerable for the loss, damage, or destruction of any of the said articles, or on account of the same not being so insured as aforesaid, or on account of the money to be received in respect of any such insurance not being applied in manner hereinbefore directed. I GIVE AND BEQUEATH, &c. [*general bequest of undisposed-of personal estate, supra, p. 7, omitting the word* "money," *see supra, p.* 163], unto my nephew X. Y., his executors, administrators, and assigns, for his and their own use and benefit in case he shall be living at the time of my death, but if he shall be then dead then in trust for such one (if any) of my said cousins hereby made tenants for life of the said hereditaments and premises hereinbefore devised in settlement, as at my death shall become entitled to the receipt of the rents and profits of the same premises, [*Devise of trust and mortgage estates, supra, p.* 13]. AND I DO HEREBY nominate and appoint the said X. Y. sole executor of this my last will and testament. [*Trustees' receipt clause, supra, p.* 15]. PROVIDED ALWAYS, and I do hereby declare my will to be, that if the said

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Substituted articles to be inventoried and go as original heir-looms.

Trustees not to be personally responsible for loss or non-insurance of heir-looms.

General bequest of personal estate to the person who, at the testator's death, shall become tenant for life of the settled estate.

Appointment of executor.

Power to ap-

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point new trustees.

trustees hereby appointed, or any of them, or any future trustee or trustees to be appointed as hereinafter is mentioned, shall die, or be abroad for twelve calendar months at one time, or be desirous of being discharged of and from, or refuse, or decline, or become incapable to act in the trusts or powers hereby in them respectively reposed, or to them respectively given as aforesaid, before the said trusts or powers shall have been fully executed, performed, or discharged, or shall have become incapable of effect, then and in such case, and when and so often as the same shall happen, it shall be lawful for the surviving or continuing trustee or trustees for the time being (and for this purpose any trustee or trustees, retiring from or declining to act in the aforesaid trusts, shall, if willing to act in the exercise of this present power, be considered a continuing trustee, or continuing trustees), or for the executors or administrators of the last surviving or continuing trustee for the time being, by writing, under his, their, or her hands or hand, to nominate, substitute, or appoint one or more person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying or being abroad, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid; and that when and so often as any new trustee or trustees shall be nominated and appointed as aforesaid, all the trust estates, monies, and premises (if any) (*t*) which shall then be vested in the trustee or trustees so being abroad, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid, either solely or jointly with the other trustee or trustees of the same respectively, or in the surviving trustee or trustees of the same respectively, or in the heirs, executors, or administrators of the last-surviving trustee of the same respectively, (as the case may be), shall, with all convenient speed, be conveyed, assigned, and transferred in such sort and manner, and so as that the same shall and may be legally and effectually vested in the surviving or continuing trustee or trustees of the same respectively, and such

(*t*) See ante, Vol. 4, p. 549.

new and other trustee or trustees, or if there shall be no continuing trustee or trustees of the same respectively, then in such new trustee or trustees only, upon the trusts hereinbefore declared of and concerning the same trust estates, monies, and premises respectively, or such of the same trusts as may be then subsisting, or capable of taking effect. OF LAND TO BE SOLD FOR BUILDING PURPOSES.

AND I DO HEREBY DECLARE, that the trustee or trustees so to be nominated, substituted, or appointed as aforesaid, shall and may, either before or after the said trust estates, monies, and premises (if any) shall have been so vested in him or them jointly or solely as aforesaid, in all things act and assist in the management, carrying on, and execution of all the trusts and powers, to which he or they shall be so appointed, in conjunction with the other then surviving or continuing trustee or trustees of the same respectively, if there shall be any such surviving or continuing trustee or trustees, and if not, then by himself or themselves, as fully and effectually, and shall and may have and exercise all the same power and powers, authority and authorities, to all intents, effects, constructions, and purposes whatsoever, as if he or they had been originally in and by this my will nominated a trustee or trustees, for the purposes for which such new trustee or trustees respectively shall be appointed trustee or trustees, and as the trustee or trustees, in this my will named, his or their heirs, executors, or administrators, in or to whose place such new trustee or trustees shall respectively come or succeed, are or is enabled to do, or could or might have done, under and by virtue of this my will, if then living, and continuing to act in the trusts or powers hereby reposed in, or limited to him or them (*u*): PROVIDED ALWAYS, and I do hereby declare, that the said several trustees hereby nominated and appointed, or to be appointed by virtue of the proviso lastly hereinbefore contained, and each and every of them, and the heirs, executors, administrators, and assigns of them, each and every of them, shall be charged and chargeable respectively only for such monies as they

New trustees to have the same powers as if originally appointed.

Proviso for the indemnity of trustees;

(*u*) See ante, Vol. 4, p. 550, n. (*x*), and supra, p. 150, n. (*k*).

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shall respectively actually receive by virtue of the trusts hereby in them reposed, notwithstanding his or their, or any of them giving or signing, or joining in giving or signing, any receipt or receipts, for the sake of conformity; and any one or more of them shall not be answerable or accountable for the other or others of them, or for the acts, receipts, neglects, or defaults of the other or others of them, but each and every of them only, for his and their own acts, receipts, neglects, or defaults respectively; and that any one or more of them shall not be answerable or accountable for any banker, broker, or other person with whom, or in whose hands any part of the said trust monies shall or may be deposited or lodged for safe custody or otherwise, in the execution of the trusts of this my will, or any of them; and that they, or any of them, shall not be answerable or accountable for the insufficiency or deficiency of any security or securities, stocks, or funds, in or upon which the said trust monies, or any part thereof, shall be placed out or invested, nor for any other misfortune, loss, or damage which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same shall happen by or through their own wilful default respectively;

—and for the payment of the trustees' expenses.

AND ALSO THAT it shall be lawful for them, the said trustees, in this my will named, and such future trustee or trustees so to be appointed as aforesaid, and every or any of them, their, and every of their heirs, executors, administrators, and assigns, by and out of the monies which shall come to their respective hands, by virtue of the trusts aforesaid, to retain to and reimburse himself and themselves respectively, and also to allow to his and their co-trustee and co-trustees, all costs, charges, damages, and expenses which they or any of them shall or may suffer, sustain, expend, disburse, be at, or be put unto, in, or about the execution of the aforesaid trusts, or in relation thereunto (*v*). IN WITNESS &c.

(*v*) See the short trustee clauses, supra, pp. 34, 35. They are not, however, used in wills of large property or of complex trusts.

XIV.

REAL ESTATE IN STRICT SETTLEMENT.

WILL *of* REAL *and* PERSONAL *Estate.* LIMITATION *of a* TERM *of Years, in* AID *of the* PERSONAL *Estate in Payment of* DEBTS. DEVISE *in* STRICT SETTLEMENT *in the* MALE *Line, including* LIMITATIONS *for Life to Sons* SUBSEQUENTLY BORN *during Testator's Life, and* LIMITATIONS *to* SECOND *and* OTHER YOUNGER *Sons of Persons not made Tenants for Life, with* TRUSTS *during a* SUSPENSE *of such Issue, and a* LIMITATION *to a* CLASS *of Persons (Daughters) of* SEVERAL RENT-CHARGES, *with usual Powers.* SHIFTING CLAUSES *to take Effect on a* SECOND *or* OTHER YOUNGER *Son becoming an* ELDEST *or* ONLY *Son.* NAME *and* ARMS' *Clause, with special Provision as to Peers.* POWERS *of* JOINTURING—*charging* PORTIONS—LEASING *for* TWENTY-ONE YEARS —LEASING *for* BUILDING—LEASING MINES—ENFRANCHISING *Copyholds*—LICENSING *Copyholders to demise*—PARTITION—*and* SALE, *and* EXCHANGE. SETTLEMENT *by reference of Copyholds, Leaseholds, and Personal Chattels.* BEQUEST *of* RESIDUE *of* PERSONAL *Estate to Testator's eldest Son,* SUBJECT *to payment of funeral and testamentary Expenses and Debts, and* APPOINTMENT *of him to be* EXECUTOR. USUAL CLAUSES.

I, A. B., of &c., do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and declare this to be my last will and testament. I GIVE AND DEVISE all and singular the manors or lordships, or reputed manors or lordships, capital and other messuages, farms, lands, rectories, advowsons, tenements, hereditaments, and

General devise of real estate;

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real estate in England, Ireland, the West Indies, or elsewhere, being freehold of inheritance, of or to which I am now or at the time of my death shall or may be seised or entitled, either at law or in equity, for any devisable estate or interest, or which I now have power to dispose by this my will (including the capital messuage or mansion-house at ——, and other estates in the several counties of —— and ——, and in Ireland and the West Indies, the reversion whereof is limited to me, in and by the indenture of settlement executed on the marriage of my son D. B. with ——, now his wife), with their and every of their rights, royalties, members, and appurtenances, (but subject to the preceding uses and estates therein respectively, as to such of the same premises as are subject to any use or estate, or uses or estates, preceding the estate or interest I have power to devise or dispose of by this my will), To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter limited, expressed, and declared of and concerning the same: that is to say; To THE USE of E. F., of &c., and G. H., of &c., their executors, administrators, and assigns, for the term of one thousand years, to commence and be computed from my death, without impeachment of waste, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter expressed, declared, and contained of and concerning the same. AND FROM AND AFTER the expiration or sooner determination of the said term of one thousand years, and in the mean time subject thereto, and to the trusts thereof, To THE USE of my son, the said D. B., and his assigns, during his life, without impeachment of waste. AND AFTER the determination of that estate, by any means, in his lifetime, To THE USE of L. M., of &c., and N. O., of &c., and their heirs, during the life of the said D. B., upon trust to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions, as occasion shall require, but nevertheless to permit the said D. B., and his assigns, during his life, to receive and take the rents, issues, and profits of the same premises for his

—including a reversion.

To uses.

To the use of trustees for a term of one thousand years;

—and subject thereto;

—of testator's son for life.

Remainder to trustees, for the son's life, to preserve contingent remainders;

and their own use and benefit (*a*). AND FROM AND AFTER the decease of the said D. B., To THE USE of each of the sons of the said D. B., who shall be born during my life, for the life of such son, without impeachment of waste: AND AFTER his decease to the use of his first and other sons successively in tail male, so THAT the elder of the said sons of the said D. B., to be born during my lifetime, and his first and other sons successively, and the heirs male of their respective bodies issuing, may be preferred to and take before the younger of the said sons of the said D. B., to be born during my lifetime, and his and their respective first and other sons successively, and the heirs male of their respective bodies issuing; AND WITH A REMAINDER immediately after the estate for life of each such son of the said D. B., to be born during my lifetime, to the use of the said L. M. and N. O., and their heirs, during the life of such son, in trust by the ways and means aforesaid, to preserve the contingent uses and estates from being defeated or destroyed, but nevertheless to permit such son, and his assigns, during his life, to receive and take the rents, issues, and profits of the same premises for his and their own use and benefit; AND AFTER the failure or determination of the uses and estates hereinbefore limited, To THE USE of the son and sons of the said D. B. who shall be born after my decease successively, according to their respective seniorities in tail male (*b*), WITH REMAINDER TO THE USE of every son of my body hereafter to be born, during his life, without impeachment of waste (except in felling timber

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—to sons of that son born in testator's lifetime, for life, with remainder to their sons in tail male.

Remainder to the sons of the same son born after the testator's death, in tail male.

Remainder to testator's afterborn sons for life, and to their

(*a*) As to trusts to preserve contingent remainders, see the references, supra, p. 131, n. (*g*).

(*b*) The vesting of estates cannot be suspended for a longer period than a life or lives in being and twenty-one years, or a minority afterwards. A devise, therefore, to an unborn person for life, with remainder to his sons or issue, as purchasers, is void, as it respects the latter limitations; for though an estate for life may be given to a person not in existence at the death of the testator, (*Somerville* v. *Lethbridge*, 6 T. R. 313: *Beard* v. *Westcott*, 5 Taunt. 393; 5 Barn. & Ald. 801), yet no contingent remainder can be limited on that estate, so as possibly to suspend the vesting, for more than a life or lives in being, and a minority. Hence the distinction in the text between the limitations to the grandsons born during the life and after the death of the testator.

Limitations for life to persons unborn at the date of the will, but afterwards born in the testator's lifetime.

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upon the estates at ——, of not greater value in any one year than £——, according to the market price of timber for the time being); AND AFTER his decease, to the use of his first and other sons successively in tail male, so THAT the elder of my said sons hereafter to be born, and his first and other sons successively, and the heirs male of their respective bodies issuing, may be preferred to and take before the younger of my said sons hereafter to be born, and his and their respective first and other sons successively, and the heirs male of their respective bodies issuing, AND WITH a remainder immediately after the estate for life of each such son of my body hereafter to be born, To the use of the said L. M. and N. O., and their heirs during the life of such son, In trust, by the ways and means aforesaid, to preserve the contingent uses and estates from being defeated or destroyed, but nevertheless to permit such son and his assigns, during his life, to receive and take the rents, issues, and profits of the same premises, for his and their own use and benefit; AND AFTER the failure or determination of the uses and estates hereinbefore limited, To THE USE of my brother, E. B., and his assigns, during his life, without impeachment of waste (except as aforesaid); AND AFTER the determination of that estate by any means in his lifetime, To THE USE of the said L. M. and N. O., and their heirs, during the life of the said E. B., in trust, by the ways and means aforesaid, to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, but nevertheless to permit the said E. B., and his assigns, during his life, to receive and take the rents, issues, and profits of the same premises for his and their own use and benefit; AND AFTER the decease of the said E. B., To THE USE of each of the sons of the said E. B. who shall be born during my lifetime, for the life of such son, without impeachment of waste (except as aforesaid); AND AFTER his decease, to the use of his first and other sons successively in tail male, so THAT the elder of the said sons of the said E. B., to be born during my lifetime, and his first and other sons successively, and the heirs male of their respective bodies issuing, may be pre-

sons in tail male.

Remainder to the use of testator's brother for life.

Remainder to trustees, during his life, to preserve contingent remainders.

Remainder to the sons of the brother born in the testator's lifetime, for life, and to their sons in tail male.

ferred to and take before the younger of the said sons of the said E. B., to be born during my lifetime, and his and their respective first and other sons successively, and the heirs male of their respective bodies issuing; AND WITH a remainder immediately after the estate for life of each such son of the said E. B., to be born during my lifetime, To the use of the said L. M. and N. O., and their heirs, during the life of such son, In trust, by the ways and means aforesaid, to preserve the contingent uses and estates from being defeated or destroyed, but nevertheless to permit such son and his assigns during his life to receive and take the rents, issues, and profits of the same premises for his and their own use and benefit; AND AFTER the failure or determination of the uses and estates hereinbefore limited, TO THE USE of the son and sons of the said E. B., who shall be born after my decease, successively, according to their respective seniorities, in tail male, WITH REMAINDER TO THE USE of T. G., of &c., and his assigns, during his life, without impeachment of waste (except as aforesaid); AND AFTER the determination of that estate by any means in his lifetime, &c., [*to L. M. and N. O., and their heirs, during his life, to preserve contingent remainders, ut supra, p. 200, remainder to each of the sons of T. G., born in testator's lifetime, for life, with remainder to his sons in tail male; remainder to the after-born sons of T. G., in tail male, as in the case of E. B.'s sons, supra; similar limitations to, and in trust for L. G. for life, and to his sons and issue, and to and in trust for R. G. for life, and to his sons and issue, as in the case of E. B., and his sons and issue, supra*]; WITH REMAINDER TO THE USE and intent, that each daughter of my body begotten, or to be begotten, and each daughter of the body of my said son, D. B., begotten or to be begotten, who shall be living at the time of the determination or failure of the several uses and estates herebefore limited, and her assigns, shall and may yearly receive and take, during her life, one annual sum or yearly rent-charge of £——, to be chargeable upon, and yearly issuing and payable out of, the said hereditaments and pre-

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Remainder to the after-born sons of the brother, in tail male.

Remainders over.

Remainder that each daughter of the testator and of his son then living may receive an annual rent-charge;

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mises hereinbefore devised, and to be paid by equal quarterly payments, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, without any deduction or abatement whatsoever, except for legacy duty (*c*); the first quarterly payment of each such annual sum or yearly rent-charge of £—— to be made on such of the said days of payment as shall happen next after such annual sum or yearly rent-charge shall take effect in possession, under the limitations aforesaid: AND TO THIS FURTHER USE and intent, that in case, and when and so often as any such annual sum or yearly rent-charge of £——, or any part thereof, shall, at any time or times, be unpaid by the space of twenty-one days next after any of the days hereby appointed for payment thereof as aforesaid, then, and so often, it shall be lawful for the daughter to whom such annual sum or yearly rent-charge of £——, so in arrear or unpaid is hereby made payable, or her assigns, to enter into and distrain upon the said hereditaments and premises hereinbefore devised, or any part thereof, and to dispose of the distress or distresses then and there found, according to law, to the intent, that thereby, or otherwise, such annual sum or yearly rent-charge of £——, so in arrear and unpaid, and every part thereof, and all costs, charges, and expenses, occasioned by reason of the non-payment thereof, shall be fully paid and satisfied: AND TO THIS FURTHER USE and intent, that in case any such annual sum or yearly rent-charge of £—— shall at any time or times be unpaid by the space of forty days next after any of the days hereby appointed for the payment thereof as aforesaid, then and so often (although there shall not have been any legal demand made thereof) it shall be lawful for the daughter to whom such annual sum or yearly rent-charge so in arrear and unpaid is hereby made payable, and her assigns, to enter into and upon, and to hold the said hereditaments and premises hereinbefore

—with power of distress;

—and entry.

(*c*) See supra, p. 172, n. (*i*).

devised, or any part thereof, and to receive and take the rents, issues, and profits thereof, to her and their own use, until she or they shall thereby, therewith, or otherwise, be fully paid and satisfied the same annual sum or yearly rent-charge of £——, and the arrears thereof due at the time of such entry, or afterwards to become due, during her or their being in possession of the same premises, together with all costs, charges, and expenses which she or they shall sustain by reason of the non-payment thereof, and such possession, when taken, to be without impeachment of waste (*d*); And SUBJECT and charged as hereinbefore is mentioned, To THE USE of P. R., the second son of S. T., by A. T., her present husband, [*for life, remainder to L. M. and N. O., and their heirs, during the life of P. R., to preserve contingent remainders; remainder to each of the sons of P. R., born in the testator's lifetime, for life, with remainder to his sons in tail male; remainder to the after-born sons in tail male, as in the case of E. B., and his sons and issue, supra pp.* 200, 201,] WITH REMAINDER TO THE USE of each of the other younger sons of the said S. T., by the said A. T., who shall be born during my lifetime, for his life, without impeachment of waste, (except as aforesaid); AND AFTER his decease, to the use of his first and other sons, successively, in tail male, so THAT the elder of such other younger sons of the said S. T., by the said A. T., to be born during my lifetime, and his first and other sons successively, and the heirs male of their respective bodies issuing, may be preferred to and take before the younger of such other younger sons of the said S. T., by the said A. T., to be born during my lifetime, and his and their respective first and other sons successively, and the heirs male of their respective bodies issuing; AND WITH a remainder immediately after the estate for life of each such other younger son of the said S. T., by the said A. T., to be born during my lifetime, To the use of the said L. M. and N. O., and their heirs, during the life of such other

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Subject thereto, to a second son of living persons for life, with remainder to his issue.

Remainder to the other younger sons of the same persons, born in the testator's lifetime, for life, and to their sons in tail male.

(*d*) As to the power and remedies for securing jointure rent-charges, see supra, p. 166, n, (*d*).

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younger son, In trust, by the ways and means aforesaid, to preserve the contingent uses and estates from being defeated or destroyed, but to permit such other younger son, and his assigns, during his life, to receive and take the rents, issues, and profits of the same premises, for his and their own use and benefit; AND AFTER the failure or determination of, and subject to, the uses and estates hereinbefore limited, TO THE USE of the said L. M. and N. O., and their heirs, during the joint lives of the said S. T. and A. T., UPON TRUST, by the ways and means aforesaid, to preserve the contingent uses and estates, hereby limited, from being defeated or destroyed; AND UPON FURTHER TRUST, to permit the rents, issues, and profits, of the said hereditaments and premises hereinbefore devised, to be received and taken from time to time by the person who, if either of them, the said S. T. and A. T., were dead, would, for the time being, be entitled to the possession or to the receipt of the rents, issues, and profits of the same premises, under the limitations hereinafter contained (*e*): AND AFTER the decease of such one of them, the said S. T. and A. T., as shall first die, TO THE USE of all and every other the younger sons and son of the said S. T., by the said A. T., who shall be born after my decease, successively, according

Remainder to trustees during the lives of the parents to preserve the contingent remainders, and allow the income to be received by the person next in remainder.

Remainder to all the after-born sons of the same persons in tail male.

Limitation and trusts during a suspense of unborn children entitled when the parent does not take a life estate.

(*e*) When an estate is limited to children unborn, at the testator's death, of a parent who does not take a life estate, a freehold estate must be limited for the whole possible period of suspense, to preserve the contingent remainders, and the rents and profits must be disposed of during the suspense of there being a child in esse, entitled under the limitations. This suspense may of course continue during the whole life of the parent, or where (as in the will in the text) the limitation is made to the sons of a husband and wife, during the joint lives of the two parents, and the estate to preserve contingent remainders, and the disposition of the rents and profits must be commensurate with the possible suspense. The trusts of the rents and profits are usually declared (as in the text) for the benefit of the person for the time being entitled under the subsequent limitations; but there is an obvious inconvenience in shifting them back on the birth of a son from a family which has been in possession, and it may generally deserve consideration, whether it would not be better to give the parent the rents and profits during the suspense of his or her having issue entitled.

to their respective seniorities, in tail male; WITH REMAINDER, &c., [*to and in trust for E. F. for life, and to his sons and issue, as in E. B.'s case, supra, p. 200*]; WITH REMAINDER, &c., [*to, and in trust for, W. X., (second son of H. G.) for life, and to his sons and issue, as in P. R.'s case, supra, p. 203*]; WITH REMAINDER, &c., [*to and in trust for the other younger sons of H. G., by her present husband, and to their issue, as in the case of the other younger sons of S. T. and A. T., supra, pp. 203, 204*]; WITH REMAINDER, &c., [*to and in trust for Y. Z., (second son of J. T.), for life, and to his sons and issue, as in P. R.'s case, supra, p. 203*]; WITH REMAINDER, &c., [*to and in trust for A. X., (third son of J. T.), and to his sons and issue, as in P. R.'s case, supra p. 203*]; WITH REMAINDER, &c., [*to and in trust for the other younger sons of J. T., by her present husband, and to their issue, as in the case of the other younger sons of S. T. and A. T., supra, pp. 203, 204*]; AND AFTER the failure or determination of, and subject to the uses and estates hereinbefore limited, TO THE USE of the son and sons of the said S. T., who shall be born after my decease, successively, according to their respective seniorities, in tail male, WITH REMAINDER TO THE USE of my own right heirs for ever. PROVIDED ALWAYS, and I hereby declare my will to be, that if the said P. R., or any issue male of his body, shall at my decease, or at any time thereafter, be or become the heir male of the body of the said A. T., the the present husband of the said S. T., or be or become the person who, if the said A. T. were then dead, would be the heir male of his body, then, and in such case, and immediately thereupon, all the uses or estates for life or in tail male hereinbefore respectively limited to or in trust for the said P. R., or any son or sons, or grandson or grandsons of his body, or such of the same uses or estates as shall or may be then subsisting or capable of taking effect, shall absolutely cease and determine in such and the same manner as if the said P. R. were then dead without issue male: PROVIDED ALWAYS, and I hereby further declare my will to be, that if any other younger son of the said S. T. by the said A. T., her present husband, or any issue male of

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Remainders over.

Remainder to after-born sons of a certain person in tail male.

Remainder to testator's right heirs.

Shifting clause to take effect on a second son or his issue becoming heir male of his father's body.

Shifting clause to take effect on any other younger son, or

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his issue, becoming heir male of his father's body.

the body of such other younger son, shall at my decease, or at any time thereafter, be or become the heir male of the body of the said A. T. or be or become the person, who, if the said A. T. were then dead, would be the heir male of his body, then and in such case, and immediately thereupon, all the uses and estates for life, or in tail male, hereinbefore limited to or in trust for such other younger son of the said S. T. by the said A. T., and any son or sons of the body of such other younger son, or such of the same uses or estates as shall or may be then subsisting or capable of taking effect, shall absolutely cease and determine in such and the same manner as if such other younger son of the said S. T. by the said A. T. were then dead without issue male (*f*). PROVIDED ALWAYS, &c. [*Proviso as to W. X. similar to that in regard to P. R. Proviso as to the other younger sons of H. G. by her present husband, similar to that in regard to the other younger children of S. T. by A. T. Proviso as to Y. Z., similar to that in regard to P. R. Proviso as to A. X., similar to that in regard to P. R. Proviso as to the other younger sons of J. T. by her present husband, similar to that in regard to the other younger children of S. T. by A. T.*] AND I HEREBY DECLARE my will to be, that the said hereditaments and premises are hereinbefore limited to the said E. F. and G. H., their executors, administrators, and assigns, for the said term of one thousand years, UPON TRUST that they, the said E. F. and G. H., or the survivor of

Similar shifting clauses as to other second and younger sons.

Trusts of the term of one thousand years:

—to raise money for the payment of the

Shifting clauses to prevent the union of two estates.

(*f*) As to the frame and construction of shifting clauses of this kind, and of those which are to take effect on the accession of another estate, see Harg. & But. Co. Lit. 327. a., n. (2), II. 1.; *Fazakerley* v. *Ford*, 4 Sim. 390; S. C. 1 Ad. & Ell. 897: *Peacock* v. *Pares*, 2 Keen. 689: *Spencer* v. *Spencer*, 8 Sim. 87: *Smyth* v. *Foley*, 3 You. & Coll. 142: *Doe* d. *Lumley* v. *The Earl of Scarborough*, 3 Ad. & Ell. 1; S. C. in error, nom. *The Earl of Scarborough* v. *Doe* d. *Saville*, 3 Ad. & Ell. 897. It should be observed that clauses of the nature of those in the text, and in the next Precedent, are to be preferred to those which are made to take effect by express reference to the accession of another estate, on account of the greater precision with which the event can be determined.

them, or the executors or administrators of such survivor, do and shall by mortgaging, selling, or otherwise disposing of the said hereditaments and premises, or any of them, for the whole or any part of the said term of one thousand years, or by, with, and out of the rents, issues, and profits of the said hereditaments and premises, or any of them, or by bringing actions against the tenants or occupiers of the same premises, or any of them, for the rents then in arrear, or by more than one, or by all of the aforesaid ways and means, or by any other reasonable ways and means, levy and raise any sum or sums of money which they, the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall in their or his discretion think fit or expedient to levy and raise for the payment of my funeral and testamentary expenses and debts, and the legacies which I shall give by this my will, or any codicil or codicils hereto; AND I HEREBY DECLARE my will to be, that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, do and shall pay and apply the monies to be levied and raised by the ways and means aforesaid, or any of them, in or towards the payment, satisfaction and discharge of my funeral and testamentary expenses, debts, and legacies accordingly. AND I DO HEREBY DECLARE that it shall be lawful for the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, to give a receipt or receipts in writing for the sum or sums of money so to be raised by them or him by sale or mortgage, or otherwise as aforesaid, under the trusts hereinbefore declared, and that the person or persons paying or advancing the same respectively, and taking such receipt or receipts as aforesaid, shall not be answerable or accountable for any loss, misapplication, or non-application, or in anywise bound or concerned to see to the application thereof, or to ascertain or inquire whether my personal estate, or any part thereof, shall have been previously applied towards payment of my said funeral and testamentary expenses, debts, and legacies, or whether the money proposed to be levied and raised is actually wanted

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testator's funeral and testamentary expenses, debts, and legacies;

—and apply the same accordingly.

Receipts of trustees to exonerate the persons advancing money for the purposes of the term.

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for the purposes aforesaid, or any of them (*g*): PROVIDED NEVERTHELESS, and I hereby declare my will to be, that although as between strangers and the said trustees or trustee for the time being of the said term of one thousand years, and as between the same trustees or trustee, and the persons claiming under this my will, both or either of the said funds may be resorted to, as the said trustees or trustee for the time being shall think fit, yet, as between the person or persons entitled to my personal estate not hereby specifically bequeathed, and the persons entitled to the real estate hereinbefore devised in strict settlement, my said personal estate not hereby specifically bequeathed is to be considered as the primary fund, and the said term of one thousand years the secondary fund for the payment of my funeral and testamentary expenses, debts, and legacies; and therefore, if the said real estate shall be first resorted to, the personal estate not specifically bequeathed shall, so far as the same shall extend, make good the money to be raised out of the said real estate, and be applied in exoneration thereof (*h*): PROVIDED ALWAYS, and I hereby declare my will to be, that when the trusts hereinbefore declared of the said term of one thousand years shall have been fully performed or satisfied, or have become unnecessary or incapable of taking effect, and the said E. F., G. H., and each of them, their and each of their executors and administrators shall have been fully reimbursed and satisfied all costs, charges, and expenses (if any) to be occasioned by or relating to the trusts hereby reposed in them as aforesaid (and which they are hereby authorized and empowered to levy and raise, by all or any of the ways and means aforesaid, or by any other reasonable ways or

The personal estate not specifically bequeathed to be the primary fund for the payment of funeral and testamentary expenses, debts, and legacies.

Proviso for cesser of the term of a thousand years.

Exoneration of persons advancing money essential.

(*g*) It is obvious that, in the absence of this provision, it would be very difficult to raise money under the trusts of the term without a suit for the administration of the estate, as it would be impossible to afford any conclusive evidence that the money to be raised was actually wanted.

(*h*) See a different method of providing for the raising of money in aid of a primary fund for any purpose, supra, p. 124.

means aforesaid, and to retain accordingly), the said term of one thousand years shall (subject and without prejudice to any disposition which shall have been made of the premises comprised therein, or any part thereof, in pursuance of the trusts aforesaid) absolutely cease and determine (*i*): PROVIDED ALWAYS, and I hereby declare my will to be, that every person who, under or by virtue of [the limitations hereinbefore contained, or of this or any other proviso in] (*k*) this my will (other than any person claiming under any of the limitations hereinbefore contained which precede the use or estate hereinbefore limited to the said ——, or any of the limitations hereinbefore contained which are subsequent to the uses or estates hereinbefore limited to the sons of the said ——, born after my decease successively in tail male) (*l*), shall become entitled to the possession or to the receipt of the rents and profits of the said hereditaments and premises hereinbefore devised, shall and do, within the space of one year next after he shall so become entitled, if he shall then be of full age, and if he shall be under age, then within one year next after he shall attain the age of twenty-one years, take upon himself and use, in all deeds, letters, and other writings whereto or wherein he shall be a party, or which he shall sign, and upon all other occasions, the surname of B., and no other surname, and also take, use, and bear the arms of B., and no other arms, or if such person be a peer, then the surname of B., together with the title of his peerage, and the arms of B. quartered together with the armorial bearings belonging to his peerage; and also shall and do, within the space of one year next after he shall so become entitled as aforesaid, or next after he shall attain the age of twenty-one years (as the case may be), apply for and endeavour to obtain an act of Parliament or license

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Name and arms' clause.

(*i*) See supra, p. 173, n. (*j*).

(*k*) The words in brackets, though usual, may be properly omitted.

(*l*) The words in the parenthesis are of course peculiar to this will, or to wills in which an exception of a similar kind is introduced; *i. e.*, generally speaking, to wills in which some of the devisees already bear the required name and arms.

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from the Crown, or take such other means as may be requisite, to enable and authorize him to take, use, and bear the surname of B. (either alone or together with the title of his peerage, as the case may be) and the arms of B., either alone or quartered with the armorial bearings belonging to his peerage, as the case may be (*m*): AND I HEREBY FURTHER DECLARE my will to be, that in case any such person shall refuse or neglect to take, use, and bear such surname and arms in manner aforesaid, or to take such means as may be requisite to enable and authorize him so to do, within the said space of one year next after my death, then from and after the expiration of the said space of one year, the limitation hereinbefore contained of the said hereditaments and premises to him so neglecting or refusing shall cease, determine, and become utterly void, and the said hereditaments and premises shall in such case immediately thereupon devolve to the person next in remainder, under the limitations hereinbefore contained, in the same manner as if such person so neglecting or refusing, being tenant for life, were dead, or, being tenant in tail male, were dead without issue male: AND I HEREBY FURTHER DECLARE my will to be, that the cesser or determination by virtue of the proviso lastly hereinbefore contained, of the estate of any person hereby made tenant for life, with remainder to his issue male in strict settlement, shall not operate to exclude, prevent, or prejudice any of the contingent uses or estates hereinbefore limited to his son or sons, or any other person or persons; but that the remainder limited to the said L. M. and N. O., and their heirs, during the life of such tenant for life, shall, after such cesser or determination, take effect and continue, for preserving such contingent uses or estates, and giving them effect as they may arise: AND THAT immediately from and after such cesser or determination of such preceding estate for life, and during such suspense and contingency of such then expectant remainder, the said L. M. and N. O., and the survivor

Estates of devisees neglecting to take name and arms to be forfeited.

On the forfeiture of the estate of a tenant for life, the estate limited to the trustees for his life to preserve contingent remainders, to take effect for that purpose;

—the trustees allowing the immediate remainder-man for the time being to take the income.

(*m*) See the provisions as to taking the name and arms of the testator, where some of the devisees are females, supra, p. 132 et seq., p. 173 et seq., &c., and the references, p. 136, n. (*l*).

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of them, and the heirs of such survivor, shall receive, pay, and apply the rents and profits which would belong to such tenant for life, of the said hereditaments and premises, if such cesser or determination had not taken place, unto the person to whom the same rents and profits would be or would have been payable, under or by virtue of this my will, in case such tenant for life were actually dead, so that immediately from and after such cesser and determination, the issue male of such tenant for life entitled for the time being, under the limitations aforesaid, to the said hereditaments and premises in remainder, immediately expectant on the decease of such tenant for life, may be entitled to the rents and profits of the said hereditaments and premises during the life of his parent, as if such parent were dead; and that in case no such issue male entitled as aforesaid shall be in existence, then during the vacancy or contingency of such issue male the person next entitled for the time being under the limitations aforesaid, to a vested remainder in the said hereditaments and premises expectant on the decease of such tenant for life, and such failure of issue male of his body, may be entitled to the said rents and profits, but without any exclusion of or prejudice to the estate, interest, or right of any such issue male afterwards coming into existence, but only until the birth of such issue male respectively: PROVIDED ALWAYS, and I hereby declare my will to be, that the cesser or determination of the estate of any person under or by virtue of the aforesaid proviso for that purpose hereinbefore contained, shall not in anywise prejudice or affect any jointure or jointures, portion or portions, or the term or terms of years, remedies, and securities for the same respectively, lease or leases, demise or demises, which, before such cesser or determination, shall have been limited, appointed, granted, or charged, of and in the said hereditaments and premises, or any of them, pursuant to and by virtue of the powers for those purposes respectively hereinafter contained: PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for each of the said several persons hereby made tenants for life (*n*), at any time or times, either

Interests created by tenants for life under their powers before forfeiture, not to be affected by forfeiture.

Power of jointuring;

(*n*) If the power is to be given to some only of the tenants for life, the

Method of in-

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before or after he shall, under or by virtue of this my will, be entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised in strict settlement (but subject and without prejudice to the uses and estates preceding the estate of the person for the time being exercising this present power, and to the powers annexed to such preceding uses or estates, and to the uses or estates which may have been limited in exercise of such powers, or any of them), by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to grant, limit, and appoint, unto any woman or women whom the person for the time being exercising this present power shall or may marry or have married, for her or their life or respective lives, and in full or in part only for or in the nature of her or their jointure or respective jointures, and in bar, or without being in bar, of her or their dower or free-bench, any annual sum or yearly rent-charge, or annual sums or yearly rent-charges, not exceeding in the whole for any one such woman the clear yearly sum of £——, to be issuing and payable out of, and charged and chargeable upon, all or any of the said hereditaments and premises hereinbefore devised in strict settlement, and to be free from all deductions whatsoever, and to be paid at such times and in such manner as to the person for the time being exercising this present power shall seem meet: AND FOR the purpose of securing the annual sum or yearly rent-charge, or annual sums or yearly rent-charges, so to be appointed as aforesaid, to limit or appoint to the woman or women respectively, to whom the same shall be appointed as aforesaid, usual powers and remedies for recovering and enforcing the payment thereof respectively, by distress and entry upon and detention of the possession or perception of the rents, issues, and profits of the hereditaments and premises so

—and of limiting usual powers and remedies;

dicating donees of powers.

intended donees must be named or specified as a class; see the form, supra, p. 137, where some of the devisees, being females, could not have a power of jointuring.

to be charged therewith as aforesaid; AND ALSO to limit and appoint the hereditaments and premises so to be charged as aforesaid, to any person or persons whomsoever, for any term or terms of years, with or without impeachment of waste, to take effect immediately after the decease of the person for the time being exercising this present power, upon such usual trusts for better securing the payment of the same annual sum or yearly rent-charge, or annual sums or yearly rent-charges respectively, as to the person for the time being exercising this present power shall seem meet; but so that every such term of years be made to cease (subject and without prejudice to any disposition or dispositions which may be made under the trusts to be declared thereof as aforesaid) on the death of the woman, for the benefit of whom the same shall be created, and the payment of the arrears (if any) of her rent-charge or rent-charges, and the expenses (if any) to be incurred by reason of the non-payment thereof: PROVIDED ALWAYS, and I hereby further declare, that no jointure which may be appointed under the power lastly hereinbefore contained shall become a lien upon the said hereditaments and premises, or any part thereof, or be paid or payable, unless either the person so appointing the same shall be or become entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises, or some issue of such person shall, [or, if of full age, would](*o*), become so entitled: PROVIDED ALWAYS, and I declare my will to be, that the said hereditaments and premises, or any of them, shall not, under or by virtue of the power lastly hereinbefore contained, be at any one time subject to the payment of any annual sums, or yearly rent-charges, exceeding in the whole the annual sum of £——; so that if, in consequence of the exercise of the same power, the said hereditaments and premises, or any of them, would, if this present proviso had not been inserted in this my will, have been for the time being charged with the payment of annual sums, or yearly rent-charges, exceeding in the whole

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—and terms of years.

No jointure to become a lien unless either the person limiting the same, or some of his issue, become entitled in possession.

The estates not to be subject to more than a specified annual sum in respect of jointures at once.

(*o*) The words in brackets are only to be inserted when the trust, supra, p. 141, is inserted.

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the annual sum of £——, the annual sum or annual sums by which such excess shall have been occasioned or such part thereof respectively as shall have occasioned and shall form such excess, shall from time to time, during the continuance of such excess, absolutely sink into, and not be raisable out of the said hereditaments and premises, and the same annual sums, or yearly rent-charges respectively, shall have preference or priority of payment, according to the priority in order of limitation of the respective estates of the several persons exercising the said power lastly hereinbefore contained (*p*): PROVIDED ALSO, and I hereby declare my will to be, that it shall be lawful for each of them, the said several persons hereby made tenants for life (*q*), at any time or times, either before or after he shall under or by virtue of this my will be entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised in strict settlement (but subject and without prejudice to the uses and estates preceding the estate of the person for the time being exercising this present power, and to the powers annexed to such preceding uses or estates, and to the uses or estates which may have been limited in exercise of such powers, or any of them), by any deed or deeds, or instrument or instruments in writing, with or without power of revocation and new appointment, to be by him sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to subject and charge all or any part of the same hereditaments and premises to and with the payment for the portion or portions of the child or children, or any one or more, exclusively of the other or others of the children of the person making such charge

Power of charging portions for younger children;

(*p*) As to powers of jointuring see 2 Sugd. Pow. ch. xvi. 6th Edit.; Chance on Powers, ch. xvi. sect. 1. See, too, ante, Vol. 1, Art. SETTLEMENTS.

Method of indicating donees of powers.

(*q*) If the power is to be given to some only of the tenants for life, the intended donees must be named or specified as a class. And if any of the donees are not legal tenants for life, as in the case where estates are limited for the separate use of married women, it is better to name them all. See the form, supra, p. 139.

(other than or besides an eldest or only son, or an eldest daughter, for the time being entitled under or by virtue of this my will to the possession, or to the first estate of inheritance of the same hereditaments and premises), of any sum or sums of money not exceeding, in the different events hereinafter specified, the different sums hereinafter mentioned: that is to say; IF THERE shall be but one such child (other than or besides an eldest or only son, or an eldest daughter, for the time being entitled as aforesaid), any sum or sums not exceeding the sum of £——; AND if there shall be two such children (other than or besides an eldest or only son, or an eldest daughter, for the time being entitled as aforesaid), and no more, any sum or sums not exceeding the sum of £——; AND if there shall be three such children (other than or besides an eldest or only son, or an eldest daughter, for the time being entitled as aforesaid), and no more, any sum or sums not exceeding the sum of £——; AND if there shall be four or more such children (other than or besides an eldest or only son, or an eldest daughter, for the time being entitled as aforesaid), any sum or sums not exceeding the sum of £——, TO BE an interest vested or interests vested in, and to be paid and payable, and divisible unto, or between, or among such child or children, or any one or more of such children respectively, at such age, day, or time, or respective ages, days, or times, and in such manner, and if more than one, in such shares and proportions, and with such powers or provisions for the advancement or preferment in the world of any such son or sons, at the discretion of any trustee or trustees, or otherwise, and with such other powers, provisoes, restrictions, declarations, and limitations, for the benefit of such child or children, or some or one of them, as the person for the time being exercising this present power shall in manner last aforesaid direct, appoint, or declare: AND by the same, or any other deed or deeds, writing or writings, to be executed and attested as lastly hereinbefore is prescribed, or by will or codicil as aforesaid, to charge the premises intended to be charged with such portion or portions respectively, with the payment of any annual sum or sums of money, not exceeding the interest of the sum or sums

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—varying according to the number of children;

—and with annual sums by way of interest on the portions for maintenance;

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of money so to be charged for a portion or portions, after the rate of £—— per cent. per annum, to be applied for the maintenance and education of the child or children for whom the portion or portions to be charged as aforesaid shall be intended, in the mean time until such portion or portions shall become payable, the said annual sum or sums of money for maintenance and education to be free from all deductions whatsoever, and to commence from such period or periods, and to be raised and paid in such proportions, and at such times, and be applied for the purposes aforesaid, at the discretion of such person or persons, and in such manner as the person for the time being exercising this present power shall in that behalf in and by any such deed or writing, or will or codicil as last aforesaid, direct or appoint; AND FOR providing for the raising and payment of the sum or sums of money so to be charged for a portion or portions as aforesaid, and of the annual sum or sums so to be charged for maintenance and education as aforesaid, it shall be lawful for the person for the time being exercising the said power lastly hereinbefore contained, by the same or any other deed or deeds, or writing or writings, so sealed and delivered, and attested as last aforesaid, or by his last will and testament in writing, or any codicil or codicils thereto, to limit and appoint the hereditaments and premises so intended to be charged as aforesaid, to any person or persons whomsoever, for any term or terms of years, with or without impeachment of waste, upon usual trusts, by mortgage or otherwise, to raise the money so to be charged, and the interest thereof, and the costs, charges, and expenses (if any) to be incurred in or about the execution of the trusts thereof: PROVIDED ALWAYS, and I hereby further declare my will to be, that no portion or portions which may be charged under the power lastly hereinbefore contained, nor any interest on any such portion or portions, nor any part thereof respectively, shall become a lien upon the said hereditaments and premises, or any part thereof, or be paid or payable, unless either the person so charging the same respectively shall, under or by virtue of this my will, be or become entitled to the possession, or to the receipt of the rents, issues, and profits

—and to limit terms of years for raising the same.

No portion to become a lien unless the person charging the same, or some of his issue, become entitled in possession.

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of the said hereditaments and premises, or unless some issue of such person shall, [or, if of full age, would] (*r*), become so entitled: PROVIDED ALWAYS, and I hereby declare my will to be, that the said hereditaments and premises, or any of them, shall not, under or by virtue of the power lastly hereinbefore contained, become ultimately subject or liable to the payment of any greater sum of money, in the whole, for portions, than the principal sum of £——, so that if, in consequence of the exercise of the same power, the said hereditaments and premises, or any of them, would, if this present proviso had not been inserted in this my will, have been charged with a greater sum for portions in the whole than the principal sum of £——, the charge or charges by which such excess shall have been occasioned, or such part thereof respectively as shall have occasioned and shall form such excess, shall absolutely sink into, and not be raisable out of the said hereditaments and premises, and the same portions respectively shall have preference or priority of payment, according to the priority in order of limitation of the respective estates of the several persons exercising the power lastly hereinbefore contained (*s*): PROVIDED ALSO, and I hereby further declare my will to be, that it shall be lawful for the said several persons hereby made tenants for life, as and when, under or by virtue of this my will, they shall successively and respectively be in the actual possession of or entitled to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised in strict settlement; and also for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, during the minority of any person or persons under age, who, [if of full age, would] (*t*), under or by virtue of this my will, be for the time being entitled to the actual posses-

The estates not to be subject to more than a specified sum for portions at once.

Power to grant leases for twenty-one years.

(*r*) See supra, p. 213, n. (*o*).

(*s*) As to powers to raise portions, see 2 Sugd. Pow. ch. xv. sect. 3, 6th Edit.; Chance on Powers, ch. xvi. sect. 3. See, too, ante, Vol. 1, Art. SETTLEMENTS.

(*t*) If the trust, supra, p. 141, be not inserted instead of the words in brackets, read "shall."

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sion, or to the receipt of the rents, issues, and profits of the same hereditaments and premises, from time to time, by any indenture or indentures to be sealed and delivered by him or them respectively, in the presence of and to be attested by two or more credible witnesses, to limit or appoint, by way of demise or lease, all or any of the said hereditaments and premises to any person or persons, for any term or number of years absolute, not exceeding twenty-one years, to take effect in possession and not in reversion, or by way of future interest, so as there be reserved, on every such limitation or appointment, by way of demise or lease, the best and most improved yearly rent or rents, to be incident to the immediate reversion of the hereditaments so to be limited or appointed, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift for the making thereof, and so as there be contained in every such limitation or appointment, by way of demise or lease, a condition of re-entry for non-payment, within a reasonable time to be therein specified, of the rent or rents thereby reserved, and so as the appointee or appointees, lessee or lessees, do execute a counterpart thereof, and do thereby covenant for the due payment of the rent or rents thereby reserved, and be not, by any clause or words therein contained, made dispunishable for waste (*u*): PROVIDED ALSO, and I hereby further declare my will to be, that it shall be lawful for the said several persons hereby made tenants for life, as and when, under or by virtue of this my will, they shall successively and respectively be in the actual possession of, or entitled to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised in strict settlement, and also for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, during the minority of any person or persons under age, who, [if of full

Power to grant building and repairing leases.

Powers of leasing.

(*u*) As to the construction and exercise of powers of leasing, see ante, Vol. 4, p. 531, n. (*a*); as to the method of specifying the donees of the power, see supra, p. 214, n. (*q*).

age, would] (*v*), under or by virtue of this my will, be for the time being entitled to the actual possession, or to the receipt of the rents, issues, and profits of the same hereditaments and premises, from time to time, or at any time, by any indenture or indentures to be sealed and delivered by him or them respectively, in the presence of and to be attested by two or more credible witnesses, to limit or appoint, by way of demise or lease, any part or parts of the said hereditaments and premises, to any person or persons who shall or may improve the same, by erecting and building thereon any new house or houses, erections or buildings, or by rebuilding or repairing any of the houses, erections, or buildings which now are or stand, or hereafter shall be or stand on the same hereditaments, or any part thereof, or by expending such sum or sums of money in the improvement of any such houses, erections, or buildings respectively, as shall be thought adequate for the interests therein respectively to be departed with, or shall covenant or agree so to do, within two years next after the date of such indenture or indentures, for any term or number of years, not exceeding ninety-nine years, to take effect in possession, and not in reversion, or by way of future interest, so as there be reserved, on every such limitation or appointment, by way of demise or lease, the best and most improved yearly rent or rents, to be incident to the immediate reversion of the hereditaments so to be limited or appointed, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift, for the making thereof, and so as there be contained, in every such limitation or appointment, by way of demise or lease, a condition of re-entry for non-payment, within a reasonable time to be therein specified, of the rent or rents thereby reserved, and so as the appointee or appointees, lessee or lessees, do execute a counterpart thereof, and do thereby covenant for the due payment of the rent or rents thereby reserved (*x*): PRO-

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Power to grant mining leases.

(*v*) See the last page, n. (*t*).

(*x*) As to powers to grant building, re-building, and repairing leases, see ante, Vol. 4, p. 533, n. (*b*). The same note contains a form of a power

Powers of grant-

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VIDED ALSO, and I hereby further declare my will to be, that it shall be lawful for the said several persons hereby made tenants for life, as and when, under or by virtue of this my will, they shall successively and respectively be in the actual possession of or entitled to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised in strict settlement, and also for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, during the minority of any person or persons under age, who, [if of full age, would] (*y*), under or by virtue of this my will, be for the time being entitled to the actual possession, or to the receipt of the rents, issues, and profits of the same hereditaments and premises, from time to time, or at any time, by any indenture or indentures to be sealed and delivered by him or them respectively, in the presence of and to be attested by two or more credible witnesses, to limit or appoint, by way of demise or lease, all or any part of the mines, quarries, minerals, and substances, in, under, or upon the said manors and lands, or any of them, or any part thereof, either with or without any messuages, buildings, lands, or hereditaments, convenient to be held or occupied with the same respectively, and either with or without the surface of any lands in or under which the same, or any part thereof respectively, shall lie, and whether the same have or have not been hitherto opened or worked, unto any person or persons, for any term or number of years, not exceeding sixty years, to take effect in possession and not in reversion, or by way of future interest, together with full and free liberty, license, power, and authority, to search, seek, bore, dig, drive, sink for, discover, work, get, and raise the said mines, quarries, minerals, and substances, and for those purposes from time to time to do whatever shall be needful or requisite for, in, or about the winning, working, obtaining, getting, washing, cleansing, and smelting of the said

ing building leases.

to grant such leases, confined to dwelling-houses, with limited quantities of land.

As to the method of specifying the donees of the power, see supra, p. 214, n. (*q*).

(*y*) See supra, p. 217, n. (*t*).

minerals and substances, and for the manufacturing, rendering marketable, and carrying away the same, so as there be reserved, on every such limitation or appointment, by way of demise or lease, the best and most improved rent or rents, tolls, duties, royalties, or reservations, by the acre or by the ton, or otherwise, to be incident to the immediate reversion of the hereditaments so to be limited or appointed, that can or may be reasonably had or gotten for the same, without taking any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift, for the making thereof; and so as there be contained in every such limitation or appointment, by way of demise or lease, a condition of re-entry for non-payment or non-delivery, within a reasonable time to be therein specified, of the rent or rents, tolls, duties, royalties, or reservations thereby reserved, and so as the appointee or appointees, lessee or lessees, do execute a counterpart thereof, and do thereby covenant for the due payment or delivery of the rent or rents, tolls, duties, royalties, or reservations to be thereby reserved (*z*): PROVIDED ALSO, and I hereby further declare my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, at any time or times during the life of any person hereby made tenant for life, who shall, under or by virtue of this my will, be for the time being entitled to the possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised in strict settlement, with his consent in writing, if he shall be of full age; and also at any time or times during the minority of any person hereby made tenant for life, or tenant in tail male by purchase, who shall, [or, if of full age, would] (*a*), under or by virtue of this my will, be for the time being entitled to the possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises, at the discretion of the said L. M. and N. O., or the survi-

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Power of enfranchisement.

(*z*) As to powers to grant mining leases, see ante, Vol. 4, p. 527, n. (*z*). See, too, the more elaborate form to which that note refers.

As to the method of specifying the donees of the power, see supra, p. 214, n. (*q*).

Powers of granting mining leases.

(*a*) See supra, p. 213, n. (*o*).

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vor of them, or the executors or administrators of such survivor, to enfranchise (*b*) any messuages, lands, or tenements holden of any manor, which shall for the time being be subject to the then subsisting uses and limitations of this my will, at or for such price or prices, or consideration or considerations, in money, and with such reservations, exceptions, and restrictions (if any), as they, the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, shall think reasonable, and thereupon by any deed or deeds to be sealed and delivered by them or him, in the presence of and attested by two or more credible witnesses, to limit and appoint unto, or to the use of the copyhold or customary tenant or tenants of such messuages, lands, or tenements, and his or their heirs, or otherwise, as he or they shall direct, the freehold and inheritance of the same messuages, lands, or tenements, And either together with, or without all or any such common of pasture, common of turbary, rights, liberties, and privileges, to and upon all and every or any of the commons and waste grounds, parcel of any such manor or manors, as shall have been appendant or appurtenant to such messuages, lands, or tenements immediately before the enfranchisement thereof (*c*), and the person or persons taking under any such limitation and appointment, and his or their heirs or assigns, shall from thenceforth, according to the estate or estates which shall be limited and appointed to him or them respectively, have, hold, and enjoy the messuages, lands, or tenements, which shall be so limited and appointed, with the appurtenances, discharged from all customary or copyhold tenures, and all manner of quit rents, chief rents, or customary rents, fines, heriots, and other customary payments, either annual or otherwise, which, by or according to the custom of the manor or manors of which the same shall have been previously holden, would from thenceforth have been payable to the lord or lords thereof, in respect of such mes-

Power of enfranchisement.

(*b*) With regard to the nature and operation of a power of enfranchisement, see ante, Vol. 3, p. 435, n. (*b*); p. 437, n. (*c*). See too the recent statute for facilitating enfranchisements, 4 & 5 Vict. c. 35.

(*c*) See ante, Vol. 3, p. 278, n. (*d*); p. 437, n. (*d*).

suages, lands, or tenements; And also discharged from all uses, trusts, powers, provisoes, and limitations hereinbefore declared, expressed, and contained, but subject, nevertheless, to such reservations, rights of sporting, and other privileges, rents, or payments (if any), as may be reserved, granted, or made payable, in consideration of or upon such enfranchisement or enfranchisements; and shall hold and enjoy as freehold tenant or tenants, all such common of pasture and commonable rights in and upon every or any of the commons or waste grounds, parcel of any manor or manors, as shall have been appendant or appurtenant to the said messuages, lands, or tenements immediately before the enfranchisement thereof, and shall be thereupon limited or appointed as aforesaid; AND I HEREBY DECLARE that all such yearly rents, or annual payments, reservations, rights of sporting, and other privileges (if any), as shall be reserved, granted, or made payable upon any enfranchisement under this present power, shall from time to time, and at all times hereafter, be had, received, taken, and enjoyed by the person or persons who for the time being, under and by virtue of this my will, would have been entitled to the ancient accustomed payments and privileges in respect of or over the copyhold or customary messuages, lands, or tenements so enfranchised, in case no such enfranchisement had been made (*d*): PROVIDED ALSO, and I hereby further declare my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors and administrators of such survivor, at any time or times during the life of any person hereby made tenant for life, who shall, under or by virtue of this my will, be for the time being entitled to the possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised

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Annual payments (if any), reserved on enfranchisement, to go as the profits of the seigniory would have gone.

Power to grant licenses to copyholders to demise and do other acts for improving their tenements.

(*d*) The trusts of the gross sums to be received under the power of enfranchisement, and the power to give receipts for the same, must be incorporated in the corresponding trusts, and power to give receipts for the money to be received under the power of sale and exchange; see infra.

Money to be received under a power of enfranchisement.

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in strict settlement, but with his consent in writing if he shall be of full age, and also at any time or times during the minority of any person hereby made tenant for life or tenant in tail male by purchase, who shall, [or, if of full age, would] (*e*), under or by virtue of this my will, be for the time being entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises, at the discretion of the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, to grant to any copyhold or customary tenant or tenants of any messuages, lands, or tenements holden of any manor which shall for the time being be subject to the then subsisting uses and limitations of this my will, a license or licenses, authorizing such tenant or tenants to build on or otherwise improve all or any part of his or their respective tenements, and to make roads and streets in, upon, or through the same, and to annex the same, or any part thereof, to adjacent ground, for the purpose of improvement, and to pull down any of the messuages or erections which now are, or at any time or times hereafter shall be standing or being on his or their respective tenements or any part thereof respectively, and to demise all or any part or parts of his or their respective tenements for any term or number of years not exceeding twenty-one years, (or for building, rebuilding, or repairing purposes, for any term or number of years not exceeding ninety-nine years), to commence from the respective times of granting such licenses, or for any one or more of the purposes aforesaid; And also, with the consent of the tenant or tenants to whom any such license shall be granted, to fix the sum which, during the term to be mentioned in such license, shall be considered as the annual value for assessing the fines payable to the lord upon the admission of any new tenant to any tenement which shall have been built on or improved, or for the building on and improving of which such license shall be or shall have been granted, so that the sum to be fixed shall not in any case be less than the best annual rent which

(*e*) See supra, p. 213, n. (*o*).

might at the date of such license be reasonably obtained on a demise of the premises therein mentioned for a term of ninety-nine years, or for such shorter term as shall be expressed in any such license, without taking any fine, premium, or foregift for the making of such demise, and so that the sum so to be fixed shall not be considered as the annual value, according to which the fine is to be assessed, for any greater number of years than the term of ninety-nine years, to commence from the date of such license, and so that no fine, premium, or foregift shall be taken for the making or granting of such license, save and except the customary annual fine (if any) for every year of the term, to be expressed in such license, and such fees as shall be usual or reasonable in that behalf, And so that upon the grant of every such license, there be saved and reserved to the lords of the said manors or lordships respectively for the time being, all fines, heriots, rents, customs, and services, due and to grow due in respect of the tenements, in respect of which such license shall be granted (*y*): PROVIDED ALWAYS, that every such license shall be entered on the court rolls or court books of the said manors or lordships respectively: PROVIDED ALSO, and I hereby further declare my will to be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, at any time or times during the life of any person hereby made tenant for life, who shall, under or by virtue of this my will, be for the time being entitled to the possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised in strict settlement, with his consent in writing if he shall be of full age, and also at any time or times during the minority of any person hereby made tenant for life, or tenant in tail male by purchase, who shall, [or, if of full age, would] (*z*), under or by virtue of

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Licenses to be entered on court rolls.

Power of partition.

(*y*) As to the utility of powers of this nature, see ante, Vol. 4, p. 539, n. (*f*).

(*z*) See supra, p. 213, n. (*o*).

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this my will, be for the time being entitled to the possession, or to the receipt of the rents, issues, and profits of the said hereditaments and premises, at the discretion of the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, to join and concur with the person or persons for the time being seised of or entitled to any undivided share or shares of and in any hereditaments of which only an undivided share or shares is or are hereinbefore devised, in making a partition of the same hereditaments, or any part thereof, and to give or receive any sum or sums of money for equality of partition: AND I HEREBY DECLARE that for the purpose of effectuating any such partition, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, with such consent, or at such discretion as aforesaid, by any deed or deeds, instrument or instruments in writing, sealed and delivered by them or him, in the presence of, and attested by two or more credible witnesses, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, powers, and provisoes, hereinbefore limited and declared, or to be limited and declared under the powers hereinbefore contained, of jointuring or charging portions of or concerning the undivided share or shares hereinbefore devised, of any of the said hereditaments of which it shall be desired to make partition as aforesaid (but subject and without prejudice to any lease or leases which may have been granted under any of the powers of leasing hereinbefore contained), and by the same or any other deed or deeds, or instrument or instruments in writing, to limit, declare, direct, or appoint, any use or uses, estate or estates, trust or trusts of the same undivided share or shares which it shall be thought necessary or expedient to limit, declare, direct, or appoint, in order to effectuate any such partition as aforesaid (*a*):

Power of sale and exchange.

PROVIDED ALSO, and I hereby further declare my will to

Trusts of money received for equality of partition.

(*a*) The trusts of the money to be received for equality of partition, must be incorporated with the trusts of the money to be received under the power of sale and exchange, infra, p. 229 et seq., and must be also embraced in the receipt clause, infra, p. 233.

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be, that it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, at any time or times during the life of any person hereby made tenant for life, who shall under or by virtue of this my will be for the time being entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore devised in strict settlement, with his consent in writing, if he shall be of full age, and also at any time or times during the minority of any person hereby made tenant for life or tenant in tail male by purchase (*b*), who shall, [or, if of full age would] (*c*), under or by virtue of this my will, be for the time being entitled to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises, at the discretion of the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, to dispose of and convey, either by way of absolute sale or in exchange for or in lieu of other manors, lands, or hereditaments, to be situate in England or Wales, all or any part of the said hereditaments and premises hereinbefore devised in strict settlement, and the inheritance thereof in fee-simple, to any person or persons whomsoever, for such price or prices in money, or for such an equivalent or recompense in manors, lands, or hereditaments, as to them the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, shall seem reasonable, and upon any such exchange as aforesaid to give or receive any sum or sums of money for equality of exchange: AND I HEREBY FURTHER DECLARE, that any such sale or sales as aforesaid may be made either by public auction or private contract, and that the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, shall have full power to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any

Trustees to have full discretion as to the manner and conditions of sale and exchange.

(*b*) As to the limits within which the exercise of powers of sale and exchange should be restrained, see ante, Vol. 4, p. 539, n. (*g*).

(*c*) See supra, p. 213, n. (*o*).

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conditions of sale or contract for sale or exchange of the said premises, or any part thereof, as the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor shall think fit, and shall also have power to buy in the same premises, or any part or parts thereof, at any sale or sales by auction, and to rescind, abandon, or vary any contract for sale or exchange, and to resell the premises which shall be so bought in or as to which the contract shall be so rescinded or abandoned, without being responsible for any loss which may be occasioned thereby: AND I HEREBY FURTHER DECLARE, that for the purpose of effectuating any such sale or exchange, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, with such consent or at such discretion as aforesaid, by any deed or deeds, instrument or instruments in writing, sealed and delivered by them or him in the presence of and attested by two or more credible witnesses, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, powers, and provisoes hereinbefore limited and declared, or to be limited and declared under the powers hereinbefore contained of jointuring or charging portions of or concerning the said premises, or any part or parts thereof, (but subject and without prejudice to any mortgage or mortgages, or other disposition or dispositions which may have been made under the trusts of any of the terms of years hereinbefore limited, or under the trusts of any term or terms of years to be limited under the aforesaid powers of jointuring or charging portions, and also subject and without prejudice to any lease or leases which may have been granted under any of the powers of leasing hereinbefore contained), and by the same or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct, or appoint any use or uses, estate or estates, trust or trusts of the said premises, or any part or parts thereof which it shall be thought necessary or expedient to limit, declare, direct, or appoint, in order to effectuate any such sale or exchange as aforesaid. AND I HEREBY FURTHER DECLARE, that the said L. M. and N. O., and the sur-

Power in order to effectuate a sale or exchange to revoke old and appoint new uses.

Money to be received on any

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vivor of them, and the executors and administrators of such survivor, do and shall, from time to time, receive all and singular the money to become payable to them or him upon any (*d*) sale, or for equality of (*e*) exchange as aforesaid, as and when the same shall become payable, and do and shall with all convenient speed lay out and invest the same in the purchase of other manors, lands, or hereditaments, in fee-simple in possession, to be situate in England or Wales, of a clear and indefeasible estate of inheritance, or of lands of a leasehold or copyhold or customary tenure, convenient to be held therewith, or with any hereditaments for the time being, subject to the subsisting uses or trusts of this my will, yet so as that during the life of any person hereby made tenant for life who shall for the time being be entitled as aforesaid, and shall be of full age, every such purchase be made with his consent in writing: AND MOREOVER, that they the said L. M. and N. O., or the survivor of them, or the heirs, executors, or administrators of such survivor, do and shall settle and assure, or cause to be settled and assured, all such of the manors, lands, or hereditaments, so to be purchased or taken in exchange as aforesaid, as shall be freeholds of inheritance, To the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, in and by this my will limited, expressed, and declared, or under the powers hereinbefore contained of jointuring or charging portions (*f*), to be limited, expressed, and declared of and concerning the said hereditaments and premises hereinbefore devised in strict settlement, or as near thereto as the deaths of parties, and other intervening accidents, will admit of, but not so

—sale or exchange to be laid out in the purchase of lands;

—the freehold parts whereof are to be settled to the subsisting uses of the will;

(*d*) If there be any power of enfranchisement in the settlement, insert here the words—

" enfranchisement or," see supra, p. 223, n. (*d*).

(*e*) If there be any power of partition in the settlement, insert here the words—

" partition or," see supra ,p. 226, n. (*a*).

(*f*) Other powers of charging (if any) should also be specified.

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change in discharge of incumbrances.

administrators of such survivor, upon the request of any person hereby made tenant for life, who shall, for the time being, be entitled as aforesaid, and shall be of full age, or if there shall be no person for the time being so entitled as aforesaid, and of full age, at their or his discretion to apply any sum or sums of money to be received upon any (*m*) sale or for equality of (*n*) exchange as aforesaid, or any part thereof, in or towards paying off and discharging any mortgage, or other charge or incumbrance which shall or may affect all or any of the hereditaments which shall then be subject to the uses or trusts of this my will, but without changing or altering the equities or obligations of the parties claiming under this my will, as to the defraying of the fines and expense of such renewals of leases or grants as aforesaid: AND I HEREBY FURTHER DECLARE my will to be, that until the money to be received upon any (*m*) sale, or for equality of (*n*) exchange as aforesaid, shall be disposed of in the manner hereinbefore mentioned, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, with the consent and approbation of the person (if any) hereby made tenant for life, who shall for the time being be entitled as aforesaid, and shall be of full age; and if there shall for the time being be no such person, then, at the discretion of such trustees or trustee for the time being, to place out such sum or sums of money at interest, either in the parliamentary stocks or public funds of Great Britain, or upon Government or real securities in England or Wales (but not in Ireland), in the names or name of such trustees or trustee for the time being, and to alter, vary, transpose, and dispose of the said stocks, funds, and securities as occasion shall require: AND I HEREBY ALSO DECLARE, that the interest, dividends, and annual produce arising from such stocks, funds, and securities shall go and be paid and applied to such person or persons, and for such intents and purposes, and in such manner as the

Power for the trustees till the monies to be received can be applied for the before-mentioned purposes, to invest in Government or real securities.

—the income thereof to go as the income of the lands to be purchased.

(*m*) See supra, p. 229, n. (*d*). (*n*) See supra, p. 229, n. (*e*).

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rents, issues, and profits of the hereditaments to be purchased therewith as aforesaid, would go or be payable or applicable in case such purchase or purchases, and settlement as aforesaid, were then actually made: PROVIDED ALWAYS, and I hereby further declare my will to be, that the receipt or receipts in writing of the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, or of the trustees or trustee for the time being, acting in the execution of the aforesaid powers for any sum or sums of money which may become payable [for the enfranchisement of any copyhold or customary hereditaments which may be enfranchised under the power of enfranchisement hereinbefore contained, or (*o*)] for the purchase of any hereditaments which may be sold under the power of sale hereinbefore contained, or for equality of [partition or (*p*)] exchange as aforesaid, or for any money which may be advanced by any mortgagee or mortgagees upon any mortgage or mortgages to be made under the power hereinbefore contained of raising money by mortgage, or for any other money which may become payable to the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, under or by virtue of this my will, or in the execution of the trusts hereof, shall be a sufficient and effectual discharge, or sufficient and effectual discharges for the money in such receipt or receipts respectively expressed or acknowledged to be received, and that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application thereof (*q*). [*Devise of copyholds and*

Trustees' receipt clause.

Usual clauses.

(*o*) These words apply only when the will contains a power of enfranchisement.

(*p*) These words apply only when the will contains a power of partition.

(*q*) As to the construction and operation of powers of sale and exchange, see 2 Sugd. Pow., ch. xviii; Chance on Powers, ch. xviii; ante,

Powers of sale and exchange.

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administrators of such survivor, upon the request of any person hereby made tenant for life, who shall, for the time being, be entitled as aforesaid, and shall be of full age, or if there shall be no person for the time being so entitled as aforesaid, and of full age, at their or his discretion to apply any sum or sums of money to be received upon any (*m*) sale or for equality of (*n*) exchange as aforesaid, or any part thereof, in or towards paying off and discharging any mortgage, or other charge or incumbrance which shall or may affect all or any of the hereditaments which shall then be subject to the uses or trusts of this my will, but without changing or altering the equities or obligations of the parties claiming under this my will, as to the defraying of the fines and expense of such renewals of leases or grants as aforesaid: AND I HEREBY FURTHER DECLARE my will to be, that until the money to be received upon any (*m*) sale, or for equality of (*n*) exchange as aforesaid, shall be disposed of in the manner hereinbefore mentioned, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, with the consent and approbation of the person (if any) hereby made tenant for life, who shall for the time being be entitled as aforesaid, and shall be of full age; and if there shall for the time being be no such person, then, at the discretion of such trustees or trustee for the time being, to place out such sum or sums of money at interest, either in the parliamentary stocks or public funds of Great Britain, or upon Government or real securities in England or Wales (but not in Ireland), in the names or name of such trustees or trustee for the time being, and to alter, vary, transpose, and dispose of the said stocks, funds, and securities as occasion shall require: AND I HEREBY ALSO DECLARE, that the interest, dividends, and annual produce arising from such stocks, funds, and securities shall go and be paid and applied to such person or persons, and for such intents and purposes, and in such manner as the

change in discharge of incumbrances.

Power for the trustees till the monies to be received can be applied for the before-mentioned purposes, to invest in Government or real securities.

—the income thereof to go as the income of the lands to be purchased.

(*m*) See supra, p. 229, n. (*d*). (*n*) See supra, p. 229, n. (*e*).

rents, issues, and profits of the hereditaments to be purchased therewith as aforesaid, would go or be payable or applicable in case such purchase or purchases, and settlement as aforesaid, were then actually made: PROVIDED ALWAYS, and I hereby further declare my will to be, that the receipt or receipts in writing of the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, or of the trustees or trustee for the time being, acting in the execution of the aforesaid powers for any sum or sums of money which may become payable [for the enfranchisement of any copyhold or customary hereditaments which may be enfranchised under the power of enfranchisement hereinbefore contained, or (*o*)] for the purchase of any hereditaments which may be sold under the power of sale hereinbefore contained, or for equality of [partition or (*p*)] exchange as aforesaid, or for any money which may be advanced by any mortgagee or mortgagees upon any mortgage or mortgages to be made under the power hereinbefore contained of raising money by mortgage, or for any other money which may become payable to the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, under or by virtue of this my will, or in the execution of the trusts hereof, shall be a sufficient and effectual discharge, or sufficient and effectual discharges for the money in such receipt or receipts respectively expressed or acknowledged to be received, and that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application thereof (*q*). [*Devise of copyholds and*

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Trustees' receipt clause.

Usual clauses.

(*o*) These words apply only when the will contains a power of enfranchisement.

(*p*) These words apply only when the will contains a power of partition.

(*q*) As to the construction and operation of powers of sale and exchange, see 2 Sugd. Pow., ch. xviii; Chance on Powers, ch. xviii; ante,

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leaseholds upon trusts to correspond with the uses of the freeholds, supra, pp. 144, 145: *Provisoes as to the renewal of renewable leaseholds and copyholds, supra, p.* 146: *Bequest of personal chattels upon trust, that the same may go along with the lands as heir-looms, with direction to make an inventory of, and preserve the same, supra, pp.* 147, 148]: I GIVE AND BEQUEATH all the money, securities for money, goods, chattels, rights, credits, and other personal estate whatsoever and wheresoever, of or to which I am now, or at the time of my death, shall or may be possessed or entitled, either at law or in equity, for any estate or interest which can be bequeathed by will, or of which I now have power to dispose by this my will (except what I otherwise dispose of by this my will, or any codicil hereto), unto my said son, D. B., for his own benefit, subject to the payment thereout of my funeral and testamentary expenses, and debts and the legacies bequeathed by this my will or any codicil hereto: AND I DO hereby nominate and appoint the said D. B. sole executor of this my will. [*Power to trustees to give receipts, supra, p.* 15 (*r*): *Power to appoint new trustees, supra, p.* 194: *Clauses for the indemnity of trustees, and the payment of their expenses, supra, pp.* 195, 196.] IN WITNESS &c.

General bequest of personalty, subject to the payment of funeral and testamentary expenses, debts, and legacies.

Appointment of executor.

Usual clauses.

Vol. 1, art. SETTLEMENTS, and ante, Vol. 4, p. 546, n. (*s*). The power of sale and exchange in the text differs considerably from that inserted in the Settlement, ante, Vol. 4, p. 539 et seq.; but the discrepancy will be remedied by altering the latter, should the Work reach a second Edition.

(*r*) See ante, Vol. 4, p. 548, n. (*n*). The words in the form referred to, relating to the purchase money of the estates, will be superfluous in a will containing only a settlement.

XV.

WITH TWO DISTINCT SETTLEMENTS OF DIFFERENT ESTATES, AND VARIOUS SPECIAL CLAUSES.

WILL *of* REAL *and* PERSONAL *Estate.* DEVISE *of* COPYHOLDS. DEVISE *of* CERTAIN REAL *Estate, to the intent that* WIFE *may take* TWO RENT-CHARGES, *during different Periods, with a* PROVISO FOR CESSER *of the second;* SUBJECT *thereto to Trustees for a* TERM *of Years in Trust to pay certain* ANNUITIES *if claimed, and to raise* PORTIONS *for younger* CHILDREN; SUBJECT *thereto in* STRICT SETTLEMENT. SHIFTING CLAUSE *to take Effect on a Devisee succeeding to a certain Title, with a* PROVISO *for* RESHIFTING *on another Event.* DEVISE *of an Estate in* REVERSION *in* STRICT SETTLEMENT, *including a Limitation to Daughters as* TENANTS *in* COMMON *in* TAIL. TRUSTEES *to* PRESENT *to* LIVINGS *during Minorities of Devisees in Possession.* RESIDUARY PERSONALTY *to be laid out in the* PURCHASE *of* LANDS *to be* SETTLED, *but actual Investment not to be compulsory, unless upon Requisition of a Person entitled.* TRUSTEES *may* POSTPONE *the* SALE *of and let* LEASEHOLDS. TRUSTEES *may constitute* HEIR-LOOMS, *and allow the Widow to use them during the Minorities of Devisees.* TRUSTEES *may* GIVE *any part of the* PERSONAL *Estate absolutely to a Devisee in Possession of the settled Estates.* REVERSIONARY *and* CONTINGENT *Interests* NOT *to be* SOLD *till they fall into* POSSESSION. APPOINTMENT *of Monies and Funds in pursuance of a* POWER *in the Testator's* MARRIAGE SETTLEMENT *among his* CHILDREN *other than an* ELDEST *or* ONLY SON, *with appropriate Clauses and Powers.* USUAL CLAUSES.

I, A. B., of &c., do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and

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declare this to be my last will and testament. I GIVE AND DEVISE all and singular the copyhold or customary messuages, tenements, lands, and hereditaments, in the parish of ——, in the county of ——, holden of the manor of ——, in the said county of ——, to which I was admitted, at a court holden for the said manor, on the —— day of ——, with their rights, easements, and appurtenants, unto and to the use of my wife, C. B., her heirs and assigns for ever, to be holden according to the custom of the manor, at and under the rents, fines, heriots, suits, and services therefore due and of right accustomed. [*Bequest to testator's wife of chattels in mansion-house, supra, p.* 114, *and of an immediate legacy, supra, p.* 3. *General devise of real estate in certain parishes and townships, supra, p.* 164.] TO THE USES upon, and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter limited, declared, expressed, and contained of and concerning the same: that is to say; TO THE USE and intent, that my said wife, C. B., and her assigns, shall and may, during the joint lives of herself and my mother, M. B., receive and take one annual sum, or yearly rent-charge, of £——: AND TO THE FURTHER USE and intent, that in case the said C. B. shall survive the said M. B., and my brother, O. B., shall be then living, she, the said C. B. and her assigns, shall and may thenceforth, during the joint lives of herself and my said brother, receive and take a like annual sum, or yearly rent-charge, of £——, THE SAME ANNUAL SUMS, or yearly rent-charges, of £—— and £——, to be respectively charged upon, and yearly issuing out of all and singular the said hereditaments and premises lastly hereinbefore devised, and to be paid clear of all deductions, by equal half-yearly payments, on the twenty-fourth day of June and the twenty-fifth day of December in every year, the first half-yearly payment of the said first-mentioned annual sum, or yearly rent-charge, of £——, to be made on such of the said days of payment as shall happen next after my decease, and the first half-yearly payment of the said secondly hereinbefore mentioned an-

Devise of a copyhold estate in fee.

Bequests.

General devise of real estate to uses:

To the use that testator's wife, during her own life and another's, may take an annuity;

—and on the expiration of that, in certain events, for a certain period another annuity.

nual sum, or yearly rent-charge, of £——, to be made on such of the said half-yearly days of payment as shall happen next after the decease of my said mother, or next after my decease, if my said mother shall die in my lifetime: AND TO THIS FURTHER USE and intent, that when and so often as such one of the said annual sums, or yearly rent-charges, of £—— and £——, as shall for the time being be payable, or any part thereof, shall at any time or times be unpaid, by the space of twenty-one days next after any of the days hereby appointed for the payment thereof as aforesaid, then and so often it shall be lawful for the said C. B. and her assigns to enter into and distrain upon the said hereditaments and premises hereinbefore charged with the same annual sum, or yearly rent-charge, or expressed and intended so to be, or any part thereof, and to dispose of the distress or distresses then and there found according to law, to the intent that thereby or otherwise the said annual sum, or yearly rent-charge, of £—— or £——, as the case may be, and every part thereof so in arrear and unpaid, and all costs, charges, and expenses occasioned by the non-payment thereof, shall be fully paid and satisfied; AND TO THIS FURTHER USE and intent, that in case the said annual sum, or yearly rent-charge, of £—— or £——, as the case may be, or any part thereof, shall at any time or times be unpaid by the space of forty days next after any of the days hereby appointed for the payment thereof as aforesaid, then and so often, although there shall not have been any legal demand made thereof, it shall be lawful for the said C. B. and her assigns to enter into and upon, and to hold the said hereditaments and premises hereinbefore charged with the same annual sum or yearly rent-charge, or expressed and intended so to be, or any part thereof, and to receive and take the rents, issues, and profits thereof, for her and their own use and benefit, until she or they shall therewith and thereby, or otherwise, be fully paid and satisfied the said annual sum or yearly rent-charge of £—— or £——, as the case may be, and the arrears thereof, due at the time of such entry, or afterwards to become

With power of distress;

—and entry.

WITH TWO DISTINCT SETTLEMENTS OF DIFFERENT ESTATES, AND VARIOUS SPECIAL CLAUSES.

due during her or their being in possession of the same premises, together with all costs, charges, and expenses which she or they shall sustain by reason of the non-payment thereof, and such possession, when taken, to be without impeachment of waste (*a*): PROVIDED ALWAYS, and I declare my will to be, that if the said O. B. shall have issue male living at the death of my said mother, or afterwards to be born during the life of my said wife, then and in such case the half-yearly payments of the said lastly hereinbefore mentioned annual sum or yearly rent-charge of £—— which shall fall due from time to time, during so long as any such issue male of my said brother shall be living, shall from time to time absolutely sink, for the benefit of the person or persons who, for the time being, under or by virtue of this my will, shall be entitled to the possession, or the receipt of the rents, issues, and profits of the said hereditaments and premises lastly hereinbefore devised, and so, toties quoties, whenever for the time being there shall be issue male of my said brother in existence, during the joint lives of my said brother and wife: AND I DECLARE my will to be, that, subject and charged as hereinbefore is mentioned, the said hereditaments and premises hereinbefore devised shall go, remain, and be TO THE USE of E. F., of &c., and G. H., of &c., their executors, administrators, and assigns, for the term of nine hundred years, to commence and be computed from my decease, without impeachment of waste, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared, expressed, and contained of and concerning the same: AND FROM AND AFTER the expiration or sooner determination of the said term of nine hundred years, and in the mean time subject thereto, and to the trusts thereof, TO THE USE of &c. [*Limitation to the testator's eldest son for life; remainder to L. M. and N. O., and their heirs during his life, to preserve contingent remainders; remainder to his first and other*

Proviso for cesser in certain events of the second annuity.

Subject thereto the devised estates limited to the use of trustees for nine hundred years;

—and subject thereto to uses in strict settlement;

(*a*) With respect to the powers and remedies for securing rent-charges, see ante, Vol. 4, p. 504, n 4, (*k*); p. 577, n. (*c*).

sons successively in tail male, supra, p. 168, *and pp.* 198, 199; *similar limitations to and in trust for the testator's second son, and to his sons; remainder to and in trust for testator's after-born sons, successively for life, with remainder to their sons respectively in tail male, supra, pp.* 199, 200.]: AND AFTER the failure or determination of and subject to the uses and estates hereinbefore limited, TO THE USE of my own right heirs for ever: AND I HEREBY DECLARE that the said hereditaments and premises are hereinbefore limited to the said E. F. and G. H., their executors, administrators, and assigns, for the said term of nine hundred years, UPON TRUST, that in case any person or persons shall at any time or times after my death make any claim upon my estate in respect of any arrears or future payments of certain annuities of £—— and £——, bequeathed by a codicil to the will of the late ——, or either of them, or any share or shares thereof respectively, then and in such case they the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, do and shall, by and out of the rents, issues, and profits of the said hereditaments and premises comprised in the said term of nine hundred years, levy and raise, from time to time, such sum or sums of money as they or he shall deem sufficient for satisfying and discharging such sum or sums of money as shall be payable out of my estate, in respect of any such arrears or future payments, and do and shall pay or apply the monies so to be levied or raised in the payment of the same accordingly: AND UPON THIS FURTHER TRUST, that if there shall be any child or children of my body living at the time of my decease, or born in due time afterwards (other than or besides an eldest or only son, for the time being entitled under or by virtue of this my will to the said hereditaments and premises hereinbefore devised in strict settlement, for an estate in tail male, immediately expectant on the said term of nine hundred years), then, and in such case, the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, do and shall, by mortgaging, selling, or otherwise disposing of the said hereditaments and premises, or any of them, for all

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Trusts of the term of nine hundred years:

To raise and pay certain annuities, if claimed, against the testator's estate;

—and to raise portions for the younger children of the testator;

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or any part of the same term, or by, with, and out of the rents and profits of the same hereditaments and premises, or any of them, or by bringing actions against the tenants or occupiers of the same premises, or any of them, for recovery of the rents and profits, or by more than one, or by all the ways and means aforesaid, or by any other reasonable ways or means levy and raise for the portion or portions of such child or children (other than or besides an eldest or only son so for the time being entitled as aforesaid), such sum of money as is hereinafter mentioned: that is to say; IF THERE SHALL be but one child (other than or besides an eldest or only son, so for the time being entitled as aforesaid), the sum of £——, for the portion of such one child, to become and be an interest vested in and to be paid to such one child, being a son, at his age of twenty-one years, or being a daughter, at her age of twenty-one years, or day of marriage, which shall first happen: AND IF there shall be two such children (other than or besides an eldest or only son, so for the time being entitled as aforesaid), and no more, then the sum of £—— for the portions of such two children: AND IF there shall be three such children (other than or besides an eldest or only son, so for the time being entitled as aforesaid), and no more, then the sum of £—— for the portions of such three children: AND IF there shall be four or more such children (other than or besides an eldest or only son, so for the time being entitled as aforesaid), then the sum of £—— for the portions of such four or more children; THE SAID sum of £——, £——, or £——, as the event may happen, to be shared or divided between or amongst the children respectively entitled thereto, in equal shares and proportions, and the share or shares of such of them as shall be a son or sons, to be an interest vested or interests vested in and to be paid to him or them respectively, at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters, to be an interest vested or interests vested in and to be paid to her or them respectively, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which

—varying according to the number of such children;

—and to vest and be paid as mentioned.

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shall first happen (*b*); PROVIDED ALWAYS, and I hereby declare my will to be, that if any of my children for whom portions are intended to be hereby provided as aforesaid, being a son or sons, shall die, or become an eldest or only son, so for the time being entitled as aforesaid, under the age of twenty-one years, or being a daughter or daughters, shall die under the age of twenty-one years, without having been married, then and in such case, as well the share or shares intended to be hereby originally provided for as the share or shares by virtue of this present clause or proviso, surviving or accruing, to each such son so dying, or becoming an eldest or only son, so for the time being entitled as aforesaid, and to each such daughter so dying as aforesaid, or so much thereof as shall not have been raised and applied for the preferment or advancement in the world of any such son or sons, by virtue and in pursuance of the power or authority hereinafter for that purpose contained, shall from time to time go, accrue, and belong to the survivors or survivor, or others, or other of such children (not being an eldest or only son so for the time being entitled as aforesaid), and shall vest in and be paid to him, her, or them (if more than one), in equal shares and proportions, at such and the same time or times, and in such and the same manner as is hereinbefore declared and expressed, concerning his, her, or their original portion or portions, or as near thereto as circumstances will admit (*c*); PROVIDED ALWAYS, nevertheless, and I hereby further declare my will to be, that my daughters or younger sons, or any of them, shall not, by virtue of or under the trusts hereinbefore declared, be by survivorship or otherwise, entitled to have any greater sum of money for his, her, or their respective portion or portions, than are hereinbefore mentioned (that is to say) if four or more children shall become entitled by virtue of any such appointment as aforesaid, or otherwise,

Survivorship clause.

No child or children to become entitled by survivorship to more than the sum or sums originally fixed for such child or children.

(*b*) As to this form of settlement of the portions, see ante, Vol. 4, p. 435, n. (*b*).

(*c*) As to this clause, see ante, Vol. 4, p. 437, n. (*c*).

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to portions under the trusts aforesaid, than the sum of £—— for the portions of such four or more children; And if three children, and no more, shall become entitled by virtue of any such appointment as aforesaid, or otherwise, to portions under the trusts aforesaid, than the sum of £—— for the portions of such three children; And if two children, and no more, shall become entitled by virtue of any such appointment as aforesaid, or otherwise, to portions under the trusts aforesaid, than the sum of £—— for the portions of such two children; and if one child, and no more, shall become entitled by virtue of any such appointment as aforesaid, or otherwise, to a portion under the trusts aforesaid, than the sum of £—— for the portion of such one child (*d*); AND UPON THIS FURTHER TRUST, that they, the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall, by and out of the rents, issues, and profits of the said hereditaments and premises, comprised in the said term of nine hundred years, or any part or parts thereof, levy and raise for the maintenance and education of the child or children for whom a portion or portions is or are intended to be hereby provided as aforesaid, in the meantime, and until his, her, or their portion or respective portions shall become payable, such yearly sum or sums of money not exceeding what the interest of the expectant portion or portions intended to be hereby provided for such child or children respectively would amount to, after the rate of £—— per cent per annum, as the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall for that purpose from time to time deem sufficient and proper, the said yearly sum or sums of money for maintenance, to be clear of all deductions for taxes or otherwise, and to be paid in such manner and at such times as to them, the said E. F. and G. H., or the survivor of them, or the executors or adminis-

Maintenance clause.

(*d*) The sums to which the portions for the several numbers of children are restricted by this clause, are the original sums provided for the same numbers.

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trators of such survivor shall, in that behalf, seem meet (*e*): PROVIDED ALWAYS, and I hereby declare my will to be, that it shall be lawful for the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, at any time or times, to levy and raise, by any of the ways and means aforesaid, and apply for or towards the advancement or preferment in the world of any son or sons for whom a portion or portions is or are intended to be hereby provided as aforesaid, any sum or sums of money not exceeding in the whole, for any one such son, one-third part or share of his expectant portion for the time being, but so that the said sum or sums of money shall be considered and taken to be in part of the portion or respective portions provided for such son or sons respectively, under the trusts of the said term of nine hundred years (*f*): PROVIDED ALWAYS, and I hereby further declare my will to be, that if I shall in my lifetime give or advance, with any child or children for whom a portion or portions is or are intended to be hereby provided as aforesaid, any sum or sums of money for or towards his, her, or their preferment or advancement in the world, then and in such case, unless I shall, by some writing under my hand, direct the contrary, if such advanced sum or sums of money shall be equal to or greater than the whole of the portion or portions intended to be hereby provided for such child or children severally as aforesaid, the same shall be accounted in full satisfaction of the whole of such his, her, or their portion or portions; but if such advanced sum or sums of money shall be less than such portion or portions, the same shall be considered as part only of such his, her, or their portion or portions; and such money only shall be raised under or by virtue of the trusts of the said term of nine hundred years, for the portion or portions of the child or children to or with whom such sum or sums of money shall be so given or advanced by me as aforesaid as, together with the sum or sums of money so to be given or advanced, will

Advancement clause.

Sums advanced by the testator in his lifetime, to children, to be in satisfaction or ademption of their shares.

(*e*) As to this clause, see ante, Vol. 4, p. 321, n. (*m*).

(*f*) As to this clause, see ante, Vol. 4, p. 320, n. (*l*).

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amount to and complete the sum of money intended to be hereby provided for such child or children respectively, under or by virtue of the trusts of the said term of nine hundred years (*g*): PROVIDED ALWAYS, and I hereby declare my will to be, that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, shall not sell, mortgage, or demise any of the said hereditaments and premises comprised in the said term of nine hundred years, until one of the said portions, or some part thereof, shall become payable under or by virtue of the trusts hereinbefore declared of the said term of nine hundred years, and subject and without prejudice to the same trusts, do and shall permit and suffer the person or persons for the time being entitled, under this my will, to the said hereditaments and premises comprised in the same term in reversion or remainder, expectant upon the determination thereof, from time to time to receive and take the rents, issues, and profits of the same premises, for his or their own benefit: PROVIDED ALWAYS [*Proviso for cesser, supra, p.* 208]: PROVIDED ALWAYS, and I hereby declare my will to be, that if my said son, —— [*the eldest son*], or my said son, ——, [*the second son*], or any son of my body hereafter to be born, shall succeed to the title and dignity of ——, and any younger son of my body, or any issue male of any such younger son shall be then living, then and in such case, and immediately thereupon, and so often as the same shall happen, the said hereditaments and premises hereinbefore devised in strict settlement, shall go and remain to the uses upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, to, upon, for, with, under, and subject to which the same premises would have stood limited and settled under and by virtue of this my will, if the son who shall so succeed to the title and dignity of —— as aforesaid were dead without issue male; but without preju-

No money to be raised under the terms till some portion become payable.

Proviso for cesser.

Shifting clause to take effect on any son of the testator attaining a certain title.

(*g*) As to the satisfaction or ademption of legacies by advancement by the father, see Williams's Law of Executors, Part III. book iii. chap. 3, sect. 2.

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dice (except as hereinafter is provided) to any estates or charges which may have been created by the exercise of any of the powers hereinafter contained: PROVIDED ALWAYS, and I hereby further declare my will to be, that if, by virtue of the proviso lastly hereinbefore contained, the said hereditaments and premises hereinbefore devised in strict settlement, shall have shifted to my said son —— [*the second son*], or any issue male of his body, or to any subsequently born son of my body, or any issue male of the body of any such subsequently born son; and there shall afterwards be a failue of issue male of the body, or respective bodies, of such son or sons of my body as shall have been born subsequently to the sons from whom the same hereditaments and premises shall have so shifted as aforesaid; Then, and in such case, and immediately thereupon, the said hereditaments and premises hereinbefore devised in strict settlement, shall return and remain to the uses upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations to, upon, for, with, under, and subject to which the same would have stood limited and settled, if the proviso for shifting, hereinbefore contained, had not been inserted in this my will: PROVIDED ALSO, and I hereby further declare my will to be, that if the said hereditaments and premises hereinbefore devised in strict settlement, shall shift from any son of my body, under the proviso for shifting hereinafter contained. Then, and in every such case, and immediately thereupon, any annual sum or yearly rent-charge, or annual sums or yearly rent-charges, which shall have been charged by such son, under the power of jointuring hereinafter contained, and any term or terms for years, which may have been limited by such son for securing the same, shall absolutely cease and determine: PROVIDED ALSO, and I hereby further declare my will to be, that if the said hereditaments and premises hereinbefore devised in strict settlement shall shift from any son of my body, under the proviso for shifting hereinbefore contained, Then and in every such case, and immediately thereupon, any charge or charges which shall have been made by such son, under the power of charging, with portions hereinafter

Proviso that on failure of issue male of a son to whom the estate shall have shifted, and of after born sons the estate shall reshift.

On the estate being shifted from any son, jointures limited by that son to cease;

—and portions limited by such son to cease, except so far as they have become vested.

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contained (except as to any portion or portions which may have actually become a vested interest or vested interests in any child or children of such son, under any exercise of the said power of charging with portions), shall absolutely cease and determine, and the term or terms of years (if any) which shall have been limited under the said power of charging with portions, shall (unless any portion or portions, intended to be thereby secured, shall then have become a vested interest or vested interests) also cease and determine; And if any portion or portions, intended to be secured by any such term or terms of years, shall have then become a vested interest or vested interests, all the trusts which shall have been declared, of such term or terms of years, so far as relates to any portion or portions intended to be thereby respectively secured, which shall not then have become vested, or any interest for the same, respectively, shall cease and determine (*h*). [*Power of jointuring, supra, p.* 211, *and of charging portions, supra, p.* 214. *Trusts during minorities of devises, supra, p.* 141, *changing* "tail" *into* "tail male." *Powers of leasing, supra, pp.* 217—221. *Power of sale and exchange, supra, p.* 227. *Devise of copyholds, in the same parishes and townships, to the trustees to preserve contingent remainders, and their heirs upon trusts, to correspond with the uses of the copyholds, supra, p.* 144, *varied by reference to the locality, ut supra, p.* 164.] I GIVE AND DEVISE all and singular the manors or lordships, advowsons, messuages, farms, lands, tenements, and other hereditaments and real estate in the county of ——, to which I am entitled in remainder, expectant on the decease of my said brother, O. B., and default or failure of issue male of his body, for an estate of inheritance in fee simple, by virtue of

Usual clauses.

Devise of a reversion in fee in certain settled estates.

Shifting and reshifting clauses.

(*h*) With respect to clauses for shifting and reshifting estates on the happening of certain events, see supra, p. 206, n. (*f*). In the case in the text, the family estate (of which the reversion is afterwards devised by the will) was so limited as to accompany the title on the accession to which this estate was to shift, and the object of course was to keep the testator's own estate and the family estate in the families of different sons, unless the families of all his sons, except one, failed.

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or under an indenture, bearing date the —— day of ——, and made or expressed to be made between [*parties*], and perfected by enrolment, with their rights, members, easements, and appurtenances, To the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to, the powers, provisoes, and declarations hereinafter limited, expressed, and contained, of and concerning the same, (that is to say) To THE USE, intent, and purpose, that my said wife, &c., [*that wife may take a jointure, with powers of distress and entry, supra, p.* 165.] AND SUBJECT and charged as hereinbefore is mentioned, To THE USE, &c. [*limitations to and in trust for the testator's sons, and their issue, for life, and in tail male, ut supra, pp.* 238, 239.] AND FROM AND AFTER the failure or determination of the uses and estates hereinbefore limited, of and in the said hereditaments lastly hereinbefore devised: To THE USE of all and every the daughters and daughter of my body, in equal shares, as tenants in common in tail general, with cross remainders in tail general between or among them, if more than one; AND if all the daughters of my body except one shall die without issue, or there shall be but one such daughter, then To THE USE of such one or only daughter in tail general WITH REMAINDER (*i*), To THE USE of my own right heirs for ever; PROVIDED ALWAYS, and I hereby declare my will to be, that if at any time or times, any person who by virtue of or under the limitations herein contained, shall for the time being be entitled to the possession, or to the receipt of the rents, issues, and profits of the entirety of and in the said hereditaments and premises lastly hereinbefore devised, as tenant for life, or as tenant in tail male by purchase, shall be under the age of twenty-one years, then, and in such case, &c. [*Trusts during the minorities of such persons, supra, p.* 141, *changing* "tail" *into* "tail male." *Powers of leasing, supra, pp.* 217—221. *Power of sale and exchange, supra, p.* 227.] AND I HEREBY DECLARE my will to be, that if at any time or times, the person who, being a tenant for life, or tenant in tail male, or tail general by purchase,

To certain uses.

Remainder to the testator's daughters, as tenants in common in tail;

—to testator's right heirs.

Trusts during minorities of devisees.

Trustees to present to livings during minorities of devisees.

(*i*) See ante, Vol. 4, p. 560, n. (*f*).

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under or by virtue of the limitations lastly hereinbefore contained, would, if this present proviso had not been inserted, have been entitled to present to any rectory, vicarage, or other ecclesiastical preferment comprised in the devise lastly hereinbefore contained or purchased with any money which shall have arisen from any sale or exchange under the power of sale and exchange, lastly hereinbefore contained, which shall happen to be vacant, shall be under the age of twenty-one years, and being a female, shall not be under coverture, Then, and in every such case, and so often as the same shall happen, it shall be lawful for the said L. M. and N. O. [*trustees to preserve contingent remainders,*] or the survivor of them, or the executors or administrators of such survivor, to present, at their or his discretion, to such rectory, vicarage, or other ecclesiastical preferment (*k*). [*Devise of copyholds upon trusts to correspond with the uses of the freeholds, supra, p.* 144. *Devise of leaseholds upon trusts to correspond with the uses of the freeholds, supra, p.* 145. *Provisoes as to renewal of leases and grants, supra, p.* 146. *General bequest of personalty in trust for sale and conversion, and out of the produce to pay funeral and testamentary expenses, debts, and legacies* (*supra, pp.* 7, 8), *and hold the residue upon the trusts declared of the money to arise from a sale under the power of sale* " hereinbefore contained of the said hereditaments and premises firstly hereinbefore devised;" *see supra, p.* 189]. PROVIDED ALWAYS, and I hereby expressly declare my will to be, that the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, shall not be bound to invest the said last-mentioned trust-monies, or any part thereof, in the purchase of lands or hereditaments, to be settled in manner hereinbefore mentioned, until they or he, in the exercise of their or his full and uncontrolled discretion, shall deem the same expedient, or until they or he shall be required in writing so to do, by some adult tenant for life, or in tail male in

Usual clauses.

The trust to invest money in purchase of land, not to be imperative, except on the requisition of a party interested.

Presentations to livings by infants.

(*k*) In the absence of this direction, the infant himself, and not his guardian, would present. Harg. & Butl. Co. Lit. 89, a. n. (i). *Arthington* v. *Coverley*, 2 Eq. Ca. Abr. 518.

possession, under the limitations hereinbefore contained of the said hereditaments and premises, firstly hereinbefore devised in strict settlement; PROVIDED ALWAYS, and I hereby declare my will to be, that if any part of my personal estate hereinbefore bequeathed, shall consist of leasehold messuages, lands, tenements, or hereditaments, it shall be lawful for the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, to exercise their or his free and uncontrolled discretion as to the time or times of the sale thereof respectively, under the trusts or directions hereinbefore in that behalf contained: AND in the mean time, and until such sale, to let any such leasehold messuages, lands, tenements, or hereditaments, with or without the furniture which shall be therein respectively, or any part thereof, unto any person or persons for such term or terms of years, at such rent or rents, under such conditions, and in such manner, in all respects as the said trustees or trustee for the time being shall think fit: PROVIDED ALSO, and I hereby further declare my will to be, that if the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, shall consider any personal chattels part of the personal estate lastly hereinbefore bequeathed, convenient and fit to be held as heir-looms, with any of the hereditaments and premises hereinbefore severally devised in strict settlement, it shall be lawful for them or him to select and set apart such articles as they or he shall think convenient and fit to be held as heir-looms: And, by any deed or writing, deeds or writings, under their or his hands and seals, or hand and seal, to specify the articles so to be selected and set apart, and also to specify the estates (whether firstly or secondly hereinbefore devised in strict settlement), with which the same are to be held as heir-looms: AND THE SAID L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, shall permit and suffer the articles so to be respectively selected and set apart, to be held and enjoyed from time to time, so long as the rules of law or equity will permit, by the person or persons who, for the time being, under the limitations hereinbefore

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Trustees to have absolute discretion as to the time of selling leaseholds;

—with power to let in the mean time.

Trustees may constitute any of the personal chattels heir-looms;

—to go along with either of the estates devised in strict settlement.

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respectively contained, shall be entitled to the possession or the receipt of the rents, issues and profits of the hereditaments hereinbefore devised in strict settlement, in respect of which the same respectively shall be so as aforesaid selected and set apart, yet so that the same articles respectively, or any of them, shall not vest absolutely in any person hereby made tenant in tail male, or in tail by purchase, of the said hereditaments hereinbefore devised in strict settlement, unless such person shall attain the age of twenty-one years, but at the decease of any such person, being tenant in tail male, or in tail by purchase, shall go, devolve, and remain in the same manner as if they had been freeholds of inheritance, and had been included in the devise in strict settlement hereinbefore contained of the freeholds wherewith the same shall be directed to be held as heir-looms (*l*); AND I HEREBY EMPOWER the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, to allow my said wife, C. B., to use and enjoy the articles which, under the provision hereinbefore in that behalf contained, shall be set apart as heir-looms, or any of them, during the minority of any tenant for life, or tenant in tail male, or in tail by purchase, who, under the limitations and trusts aforesaid, shall be entitled to the immediate possession or enjoyment of the same articles respectively, or any of them: PROVIDED ALSO, and I hereby further declare my will to be, that it shall be lawful for the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, at any time or times, within twenty-one years next after my decease (if they or he shall think fit so to do), to give absolutely to any person who, for the time being, shall be entitled under or by virtue of this my will to the possession or the receipt of the rents, issues, and profits of any of the said hereditaments and premises hereinbefore respectively devised in strict settlement (whether such person shall be of full age or not),

Testator's wife to enjoy the heir-looms during the minorities of devisees entitled.

Trustees empowered to give absolutely any part of the personal estate to the devisee in possession of the settled estates.

(*l*) As to the settlement of personal chattels to go as heir-looms along with real estate settled in strict settlement, see ante, Vol. 4, p. 635, n. (*z*).

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any such part and parts of my said personal estate hereinbefore bequeathed, as my said trustees or trustee for the time being shall consider not proper for the purpose of sale, nor proper to be used and enjoyed as heir-looms under the aforesaid provision in that behalf: AND I HEREBY declare, that it shall not be lawful for the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, to sell or convert into money any part of the personal estate hereinbefore bequeathed to them, the said L. M. and N. O., their executors and administrators, upon the trusts aforesaid, which may be contingent or reversionary, until the same shall have actually vested, and fallen into possession (*m*): AND WHEREAS, by an indenture bearing date the —— day of ——, and made, or expressed to be made between [*parties*] (being a settlement executed previously to, and in consideration of the marriage then intended, and shortly after had and solemnized between me and my said wife): IT WAS DECLARED AND AGREED, that the said [*trustees*], their executors, administrators, and assigns, should from and after the solemnization of the said then intended marriage, stand possessed of certain sums of £—— and £——, appointed and made payable to them as therein mentioned, and all and every, or any other sum or sums of money which should or might be paid or accepted in lieu or in respect thereof, and all interest to become payable for the same; and also of such part as should amount to or be equal in value to the sum of £——, of and in a certain sum of £——, £3 per cent. consolidated Bank annuities, which had been appointed to or in favour of my said wife, as therein mentioned, or of the produce to arise by sale thereof, when and if, and so soon as the same should be transferred,

Contingent and reversionary interests not to be sold till they have vested and fallen into possession.

Recital of the testator's marriage settlement, declaring trusts of certain funds for the benefit, subject to the life-interests of himself and his wife, of their children, as he should appoint, with trusts and powers for the benefit of such children.

(*m*) A clause to this effect should always be inserted, if it appears that the testator has reversionary or contingent interests which would be included in the general trust for sale. For the testator seldom intends that such interests shall be sold for what they will fetch at his death, but means, on the contrary, that the conversion shall be deferred till they fall into possession. The direction to postpone the conversion would, however, be nugatory against creditors.

Postponement of the conversion of reversionary and contingent interests.

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assigned, or paid to them or him, according to the true intent and meaning of the several parties to the said indenture, and also of the dividends, interest, and income which should grow due for the same, upon trust (with such consent, or of such proper authority as therein mentioned), to invest the principal monies when the same should become due, and be paid at interest in or upon any of the stocks or funds of Great Britain, or upon real securities in England or Wales, and from time to time (with such consent or of such proper authority as aforesaid) to alter, vary, or transpose the same; and, upon further trust, to permit me or my assigns, during my life, to receive the interest, dividends, and income of the said trust-monies, stocks, funds, and securities, and after my decease to permit my said wife, or her assigns during her life, to receive the same (subject as therein mentioned), and after the decease of the survivor of us, upon trust, to assign and transfer the said trust monies, stocks, funds, and securities, and pay and apply the dividends, interest, and income thereof, which should grow due after the decease of the survivor of me and my said wife, in the meantime, and until such assignment and transfer should be made unto or in trust for the child, grandchild, or all and every, or any one or more of the children, grandchildren, and other issue of the said marriage, between me and my said wife (such grandchildren and issue respectively to be born before any such appointment as thereinafter was mentioned should be made to them respectively), in such manner and form, and, if more than one, in such parts, shares, and proportions, and for such times, and with such limitations in favour of any one or more of the other of the said children, grandchildren, and other issue respectively, and to vest, and be payable and paid, transferred, and assigned, at such ages, days, or times respectively, and upon such contingencies, and under and subject to such directions and regulations for maintenance, education, and advancement, and such conditions and restrictions as I at any time or times, and from time to time, by any deed or deeds, instrument or instruments in writing, to be executed and attested, as therein mentioned, or by my last

will and testament in writing, or any writing purporting to be or to be in the nature of my last will and testament, or any codicil or codicils thereto, should direct or appoint, and in default of such direction or appointment, upon the trusts therein mentioned, for the benefit of the child or children of the said marriage, with usual powers and provisions for the maintenance, and education, and advancement of such child or children respectively, until the vesting and payment of his or their portion, or respective portions, and for the accumulation of any surplus dividends, interest, or annual produce in the mean time: NOW PURSUANT TO, and by force and virtue, and in exercise and execution of the power or authority to me for this purpose given or reserved as hereinbefore is mentioned, and of every or any other power or authority, in anywise enabling me in this behalf, I do, by this my last will and testament, direct and appoint, that the said [*trustees of the settlement*], their executors, administrators, and assigns, shall stand and be possessed of and interested in all and singular the said trust-monies, stocks, funds, and securities in the said settlement hereinbefore mentioned, and the interest, dividends, and annual produce thereof, from and after the decease of the survivor of me and my said wife, IN TRUST for all and every my children and child by my said wife, other than or besides an eldest or only son for the time being entitled, under the limitations hereinbefore contained, to the possession or to the receipt of the rents, issues, and profits of the said hereditaments and premises firstly hereinbefore devised in strict settlement, or an eldest or only son for the time being entitled, under the limitations hereinbefore contained, to the possession or to the receipt of the rents, issues, and profits, of the said hereditaments and premises secondly hereinbefore devised in strict settlement, in equal shares and proportions, the share or shares of such of them as shall be a son or sons, to be an interest vested, or interests vested in him or them respectively, at his or their age, or respective ages, of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters, to be an interest vested, or interests vested in her or them respectively, at her or their age, or

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Appointment in pursuance of the powers of all the funds.

In trust for the testator's younger children.

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respective ages of twenty-one years, or day, or respective days of marriage which shall first happen; and if there shall be but one such child, the whole to be in trust for such one child (*n*): PROVIDED ALWAYS, and I hereby declare my will to be, that if there shall be more than one such child for whom portions are intended to be hereby provided as last aforesaid, and any of them, being a son or sons, shall die, or become an eldest, or only or other son, so for the time being entitled respectively, as hereinbefore is mentioned, under the age of twenty-one years, or, being a daughter or daughters, shall die under the age of twenty-one years, without being, or having been married, then as well the share intended to be hereby originally provided for, as the share or shares, by virtue of this present clause or proviso, surviving or accruing to each son so dying, or becoming an eldest or only son, so for the time being entitled as aforesaid, and to each such daughter so dying as aforesaid, shall from time to time go, accrue, and belong to the survivors or survivor, or others, or other of such children, and shall vest in and be paid to him, her, or them, if more than one, in equal parts, shares, and proportions, at such and the same time or times, and in such and the same manner as is hereinbefore declared and expressed, touching or concerning his, her, or their original portion or portions, or as near thereto as circumstances will admit (*o*): PROVIDED ALWAYS, and I hereby declare my will to be, that the several powers, provisoes, and directions, for maintenance and education, advancement, and accumulation respectively contained in my said settlement, shall respectively take effect, and be applicable to the portion, or respective portions hereinbefore appointed by me, and the dividends, interest, and annual produce of the same respectively, in the same manner as if the same powers, provisoes, and directions were here repeated, or powers, provisoes, or directions to the like effect were here inserted, and made applicable to the same portion or portions respectively, and

Survivorship clause.

The powers of maintenance, education, and advancement in the settlement, to apply to the portions appointed by the will.

(*n*) As to the settlement of personal estate in this manner, see ante, Vol. 4, p. 435, n. (*b*).

(*o*) As to this clause, see ante, Vol. 4, p. 437, n. (*c*)

the dividends, interest, and annual produce of the same respectively. [*Appointment of the testator's wife to be guardian, during her widowhood, of his infant children, and of the trustees to be guardians after her death or marriage, supra, p. 84. Devise of trust and mortgage estates, supra, p. 13. Appointment of executors with power to arrange and compromise, supra, p. 14. Trustees' receipt clause, supra, p. 15. Power to appoint new trustees, supra, p. 194. Clauses for the indemnity of the trustees, and the payment of their expenses, supra, pp. 195, 196.*] IN WITNESS, &c.

WITH TWO DISTINCT SETTLEMENTS OF DIFFERENT ESTATES, AND VARIOUS SPECIAL CLAUSES.

Usual clauses.

XVI.

WILL *of* PERSONAL ESTATE *by a* MARRIED WOMAN, *under a* POWER *in her* MARRIAGE SETTLEMENT (*a*).

UNDER A POWER, BY A MARRIED WOMAN.

I., C. B., the wife of A. B., of &c., in pursuance of the power hereinafter more particularly referred to, and of every or any other power or authority in anywise enabling me in this behalf, do hereby revoke all wills, codicils, and other testamentary dispositions heretofore made by me, and declare this to be my last will and testament.

Reference to power.

WHEREAS, by an indenture, bearing date the —— day of ——, and made or expressed to be made between [*parties*], (being the settlement executed previously to, and in consideration of, the marriage then intended, and shortly afterwards had and solemnized between me and the said A. B.), it was agreed and declared between and by the said parties thereto, that the said E. F. and G. H., [*the trustees*], their executors, administrators, and assigns, should stand and be

Recital of marriage settlement;

(*a*) With respect to the wills of married women, see 1 Williams's Law of Executors, Part I. book ii. ch. 1, sect. 2; and also Part I. book v. ch. 2, sect. 1: Roper, on Husband and Wife, ch. 19, sect. 3; 2 Sugd. Pow. ch. 8, sect. 2, sixth edition.

Wills of married women.

UNDER A POWER, BY A MARRIED WOMAN.

possessed of and interested in the sum of £——, £— per cent. —— Bank Annuities, and the dividends thereof, Upon trust that they, the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, should either permit and suffer the whole or any part of the said sum of £——, £— cent., —— Bank Annuities, to remain in its then actual state of investment, or should, at any time or times, with such consent, or at such discretion as therein mentioned, sell, transfer, and dispose of the said sum of £——, £— per cent., —— Bank Annuities, or any part thereof, and should, with such consent, or at such discretion as aforesaid, lay out or invest the monies to arise by such sale, transfer, or disposition, in their or his names or name, in or upon the stocks, funds, or securities therein mentioned, with power, as therein mentioned, to alter, vary, or transpose the same; And should, during the joint lives of me and the said A. B., pay the dividends, interest, and annual proceeds of the said sum of £——, £— per cent., —— Bank Annuities, and of the monies to arise by the sale, transfer, or disposition thereof, or of any part thereof, and of the stocks, funds, and securities in or upon which the same monies, or any part thereof, might be invested to me, for my separate use; And after the death of such one of us, the said A. B. and myself, as should first die, should pay the said dividends, interest, and annual proceeds of the said trust-monies, stocks, funds, or securities to, or permit the same to be received by, the survivor of us, during his or her life; And it was, by the said indenture, further agreed and declared, that after the death of the survivor of me and the said A. B., the said E. F. and G. H., their executors, administrators, and assigns, should stand and be possessed of, and interested in, the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual proceeds thereof, upon the trusts, and subject to the powers thereby declared and given for the benefit of children of the said then intended marriage; And it was, by the said indenture, further agreed and declared, that in case there should be no child of the said then intended marriage, who, being a son, should attain the age

UNDER A POWER, BY A MARRIED WOMAN.

of twenty-one years, or, being a daughter, should attain that age or marry, the said E. F. and G. H., their executors, administrators, and assigns, should stand and be possessed of and interested in the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, or of so much thereof respectively as should not have become vested or been applied under any of the trusts or powers therein contained, Upon the trusts following: (that is to say,) In case the said A. B. should die in my lifetime, then, from and after his death, and such default or failure of children, as aforesaid, which should last happen, In trust for me, my executors, administrators, and assigns; But in case I should die in the lifetime of the said A. B., then, from and after the decease of the said A. B., and such default or failure of children, as aforesaid, which should last happen, Upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations as I should, notwithstanding my coverture, by my last will and testament in writing, or any codicil or codicils thereto, or any writing in the nature of or purporting to be a will or codicil, direct or appoint; And in default of such direction or appointment, upon the trusts therein mentioned: AND WHEREAS, there has been no issue of the said marriage, NOW PURSUANT TO, and by force and virtue and in exercise and execution of the said power or authority to me for this purpose given, by the hereinbefore recited indenture of settlement, as aforesaid, and of every or any other power or authority in anywise enabling me in this behalf, I do, by this my last will and testament in writing, direct and appoint, THAT IN CASE there shall be no child of the said marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, the said E. F. and G. H., their executors, administrators, and assigns, shall, from and after the death of the said A. B., and such default or failure of children, as aforesaid, which shall last happen, stand and be possessed of and interested in, the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual proceeds thereof, or of so much thereof respectively as shall

—that there has been no issue of the marriage.

Appointment in pursuance of the power in the settlement.

That the trustees of the settlement shall stand possessed of the trust-funds.

UNDER A POWER, BY A MARRIED WOMAN.

not have become vested, or been applied, under any of the trusts or powers in the said indenture contained, UPON THE TRUSTS following:—(that is to say) UPON TRUST that the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, do and shall, by and out of the said trust-monies, stocks, funds, and securities, interests, dividends, and annual proceeds, pay and discharge my funeral and testamentary expenses; AND raise and pay to —— the sum of £——, to —— the sum of £——, and to —— the sum of £——; (the said several sums to be clear of legacy duty (*b*), and all other deductions); AND DO AND SHALL pay and transfer the residue of the said trust-monies, stocks, funds, and securities, and the interest, dividends, and annual proceeds thereof, unto —— and ——, in equal shares; AND I DO HEREBY nominate and appoint the said E. F. and G. H., to be executors of this my last will and testament (*c*). IN WITNESS, &c. (*d*).

In trust to pay testamentary expenses;

—and legacies clear of duty;

—and the residue to two persons in equal shares.

Appointment of executors.

Legacy and probate duty in respect of wills under powers.

(*b*) Where personal estate is disposed of by a will made under a power, legacy duty is payable on such estate at the same rate as if it had been the personal estate of the person making the will. (*Re Cholmondeley*, 1 Cro. & Mee. 149: *Platt* v. *Routh*, 6 Mee. & Wels. 756.) It has been decided too, by the last case, in opposition to several preceding decisions noticed in the judgment, that no probate duty is payable on such estate.

Executors and probate of wills under powers.

(*c*) There is an obvious convenience in appointing the trustees of the settlement executors of the will, as they must, necessarily, to some degree, be implicated in the disposition of the funds; but there is no objection to the appointment of other persons. The will must be proved in the usual manner, but the husband's consent is not requisite. See the references, supra, p. 255, n. (*a*); and *Ex parte Tucker*, 1 Mann. & Gran. 519.

Execution of the wills of married women made under powers.

(*d*) By the statute 1 Vict. c. 26, sect. 8, it is enacted, "That no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this act." And by sect. 10 of the same statute it is enacted, "That no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required, that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity."

Now, as it is certain that the will of a married woman, made before the

XVII.

CODICIL. CODICIL *to the* WILL *of A. B., altering the Amount of a Legacy, in consequence of an Advancement by the Testator in his Lifetime.*

I, A. B., of &c., do hereby declare this to be a codicil to my last will and testament, bearing date the — day of ——;

Recital of the testator's having appointed to his son by deed, a portion of a sum of money which had been given to the son by the will;

WHEREAS, in contemplation of the marriage agreed upon, and intended shortly to be solemnized, between my son, D. B. and M. N., widow and relict of ——, of &c., deceased, by a deed-poll, or instrument in writing, under my hand and seal, bearing date this — day of ——, I have, in exercise of the power enabling me in that behalf, as in my said will is mentioned, appointed the sum of £——, the residue remaining unappointed of the sum of £——, provided for the portions of my son, E. B., and my said son, D. B., by the settlement on my marriage with C. B., my first wife, as in my said will is mentioned, for the immediate portion or fortune of the said D. B., and to be transferable to his executors, administrators, and assigns, but not to be raised, or attended with interest, till after my decease:

—of the testator's having charged his estates with another sum for the benefit of his son;

AND WHEREAS, in contemplation of the said intended marriage, by indentures of lease and release, bearing date respectively the —— and —— days of this instant month of ——, I have conveyed my manor, or lordship of —— &c., and other estates in the county of ——, subject to the subsisting mortgages thereon, unto and to the use of F. B., E. F., G. H., and I. K., their heirs and assigns, by way of mortgage, for securing the payment of the sum of £——, with interest for the same, unto them the said F. B., E. F.,

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act, would not have been valid, except made with the forms required by the power, a question arises, whether the 10th section so overreaches the 8th, as to do away with such forms in respect of the wills of married women. There cannot be much doubt that it does extend to the case; but, to avoid all question, it is safer to comply with the requisitions of the power, as well as with those of the act.

CODICIL.

G. H., and I. K., their executors, administrators, and assigns, upon certain trusts declared thereof, by an indenture, bearing date this instant month of ——, for the benefit of the said D. B. and the said M. N., his intended wife, and the child or children of the said intended marriage: AND WHEREAS, in contemplation of the said intended marriage, by other indentures of lease and release, the lease bearing date the day next before the release, and the release bearing date the — day of ——, I have conveyed my said manor of ——, and other estates in the said county of —— (subject to the subsisting mortgages thereon), unto and to the use of the said D. B., his heirs and assigns, by way of mortgage, for securing the payment of the sum of £——, with interest for the same, to him the said D. B., his executors, administrators, and assigns; Now I, THE SAID A. B., do, by this codicil to my said will, ratify and confirm the aforesaid appointment made by me, in and by the said deed-poll of the said sum of £——, to my said son, D. B.; AND I DO HEREBY revoke the bequest in my said will contained, of the sum of £——, part of the legacy or sum of £——, in and by my said will bequeathed to my said son, D. B.; AND I DO HEREBY ratify and confirm the bequest contained in my said will, of the said legacy, or sum of £——, to the said D. B., with interest for the same, at the rate of £5 per cent. per annum, from the time of my decease, so far as relates to the sum of £——, the residue of the said legacy, or sum of £——, and the interest of the same sum of £——, AND IN ALL other respects I do hereby ratify and confirm my said last will and testament, IN WITNESS &c. (*a*).

—of the testator's having mortgaged other estates to the son to secure another sum.

Confirmation of the appointment by deed;

—and revocation of the bequest by the will of the same sum;

—and confirmation of the bequest of the residue.

Confirmation of the will.

Objects and disadvantages of codicils.

(*a*) As codicils, (if extending beyond the gift or revocation of a legacy), are generally very special, and depend entirely on the wills to which they belong, it has not been deemed necessary to give more than one precedent. It should be observed that, as a general rule, codicils are objectionable, unless for very simple purposes, such as the gift or revocation of a legacy; for, independently of the risk of a document unattached to the will, being lost, there is often much difficulty in fitting the provisions of the codicil into the trusts or limitations of the will. And moreover, although for most purposes a codicil is read and construed as part of the will, yet for some purposes it is deemed a distinct instrument (Williams's Law of Executors; Index, *Codicil*), which obviously opens the way for an additional question.

APPOINTMENTS OF NEW TRUSTEES.

Appointments of new trustees;

IN all wills, settlements, and other instruments which create trusts, it is expedient to insert powers to appoint new trustees, in case of any of the original trustees dying, declining, or becoming incapable to act. For, if such a provision be wanting, the parties are often compelled to have recourse to the Court of Chancery, and sometimes to Parliament. See ante, Vol. 4, p. 326, n. (u), and Chance on Powers, Ch. 19.

—by indorsement;

New trustees of a settlement are most usually appointed by deeds indorsed on the settlement, so that the recitals commence with the first event which has happened after the execution of the settlement, (in case of a marriage settlement, for example, with the solemnization of the marriage), and carry down the history of the estates and the parties to the time of the intended appointment. If the new trustee be appointed in the place of a retiring trustee, the trustee retiring is made a party to testify his desire to retire, and, if necessary, to transfer the trust estates.

—by distinct deed.

New trustees of a will must necessarily be appointed by a distinct deed; and in that case, and, in any other case when an appointment cannot be made by a deed indorsed on the instrument creating the trust, the appointment must commence with a recital of the instrument creating the trust, and must continue the narrative of the subsequent events as in an indorsed deed. All the devises and gifts to the trustees must be recited; but there is no occasion to state the trusts themselves: it is sufficient to shew what property has to be vested in the new trustees, without indicating particularly the trusts on which it is to be held. The power of appointing the trustees, and the direction to transfer the trust estates, must of course be recited. The Precedents XVIII. and XXII., infra, will furnish examples of the recital of instruments creating the trust.

—by the Court of Chancery.

It should be observed, that the Court of Chancery will, in some cases, appoint new trustees under the act 11 Geo. 4 & 1 Will. 4, c. 60, sect. 22, although the instrument creating the trust contains a power to appoint new trustees. *In re Fauntleroy*, 10 Sim. 252.

XVIII.

UNDER A WILL OF SETTLED REAL ESTATE, PERSONALTY, MORTGAGE AND TRUST ESTATES.

APPOINTMENT *under a Power in a* WILL *of a new Trustee of* SETTLED REAL *Estate, and of* PERSONAL *Estate, and of* MORTGAGE *and* TRUST *Estates, in the place of a Trustee who had* DISCLAIMED. *The Appointment as to the settled Estate being effectuated by* REVOCATION *of* USES *and* APPOINTMENT *to a* PROVISIONAL TRUSTEE *to reconvey to the* USES.

Parties.

THIS INDENTURE, made &c. BETWEEN G. H., of &c., and I. K., of &c. [*continuing trustees*], of the first part; L. M., of &c., [*new trustee*] of the second part; and N. O., of &c., [*provisional trustee*] of the third part. [*Recital that A. B. made his will and thereby devised certain freehold hereditaments* "to the said E. F., G. H., and I. K., and their heirs, to the uses upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations therein declared, expressed, and contained of and concerning the same," *and bequeathed certain leaseholds and other personal estate* "to the said E. F., G. H., and I. K., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes and declarations therein declared, expressed, and contained of and concerning the same," *and devised trust, and mortgage estates to the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns, upon the subsisting trusts and equities of redemption, and appointed E. F., G. H., and I. K., executors of the will, and gave them certain legacies if they acted* (*a*): "And in the said

Recital of the will under which the new trustee is to be appointed; and of the death of the testator and the probate of his will.

(*a*) See the observations as to framing recitals of this nature, supra, p. 261.

UNDER A WILL OF SETTLED REAL ESTATE, PERSONALTY, MORTGAGE AND TRUST ESTATES.

will was contained a power," &c. [*Power of appointing new trustees, with the direction as to the transfer of the trust estates, and the declaration as to the powers of the new trustees set forth at length. Recital of the death of the testator, and of the probate of his will, and of the renunciation of probate by E. F.*] AND WHEREAS the said E. F. in nowise administered to the estate of the said testator, and in nowise acted or interfered in the execution of the trusts of the said will, or any of them, or as guardian of the children of the said testator: AND WHEREAS the said E. F., by a deed-poll bearing date the —— day of ——, under his hand and seal, renounced and disclaimed, &c. [*Recites the operative part of a deed of disclaimer by E. F., verbatim, see the precedent of such a deed, infra.*] AND WHEREAS the said G. H. and I. K., are desirous, in pursuance of the said power in this behalf in the said will contained, of appointing the said L. M. to be a trustee in the stead or place of the said E. F., for the purposes of the said will (*b*): NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire, and pursuant to, and by force and virtue and in exercise and execution of the power or authority by the said will for this purpose given to the said G. H. and I. K., as aforesaid, and of all and every other power or authority in anywise enabling them in this behalf, they, the said G. H. and I. K., do by this present deed or writing under their hands and seals (*c*), nominate, substitute, and appoint the said L. M. to be a trustee in the stead or place of the sai E. F., for the purposes of the said will (*d*): AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf contained in the same will, and pursuant to, and by force and virtue and in

That one of the trustees to the will has not acted;

—and has disclaimed by deed;

—of the desire to appoint the new trustee.

Witnesseth appointment of the new trustee.

Witnesseth further, revocation of the uses of the freehold;

(*b*) The language of this recital, as well as of the operative part, must be adapted to the power, so that the recital and the appointment may be an echo of the power.

(*c*) As to the operative words of appointments, and the manner of exercising a power, see supra, p. 211, n. (*e*). The case of *Doe* d. *Spilsbury* v. *Burdett*, there referred to, has been subsequently reversed. See 1 Per. & Dav. 670.

Manner of exercising a power.

(*d*) See supra, n. (*b*).

UNDER A WILL OF SETTLED REAL ESTATE, PERSONALTY, MORTGAGE AND TRUST ESTATES.

exercise and execution of the power or authority by the said will for this purpose given to the said G. H. and I. K., and of all and every other power and authority in anywise enabling them in this behalf, they, the said G. H. and I. K., do by these presents revoke, determine, and make void all and every the uses, trusts, intents, purposes, powers, provisoes, and declarations in and by the said will limited, declared, expressed, and contained, and which are now subsisting or capable of taking effect, of or concerning the freehold estates and hereditaments by the said will expressed to be devised to the said E. F., G. H., and I. K., and their heirs, to the uses and in manner in the said will mentioned, and of or concerning their rights, easements, and appurtenances,

—and appointment of the same to a provisional trustee;

AND direct, limit, and appoint, THAT the same freehold estates, hereditaments, and premises shall henceforth go, remain, and be TO THE USE of the said N. O., his heirs and assigns, TO THE INTENT that the said N. O. may forthwith grant and convey the same unto the said G. H., I. K., and L. M., and their heirs, to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, to, for, upon, with, under, and subject to which the said freehold estates, hereditaments and premises hereinbefore appointed or expressed, and intended so to be, would now, under and by virtue of the said will, stand and be limited or subject, in case this present indenture had not been made and executed, and the said L. M. had been originally made a devisee to uses and trustee in and under the said will, instead of the said E. F., and accordingly, the name of the said L. M. had in the said will been inserted throughout, instead of the name of the said E. F. (*e*): AND THIS INDENTURE ALSO WIT-

—to be reconveyed to the continuing trustee and new trustee jointly to the uses of the will.

Witnesseth further, assign-

(*e*) When the power of appointing new trustees provides that, on an appointment the estates shall be vested in and conveyed to the new trustees, "*to the uses*, upon and for the trusts, intents, and purposes, &c.," of the trust instrument, instead of simply, "upon and for the trusts, intents, and purposes, &c.," it has been thought that the new trustees should have a seisin in them to serve the uses as they arise, and that it is not sufficient merely to convey the estate of the old to the new trustees. See 2 Sugd. Pow. ch. 19; Chance on Powers, ch. 19, sect. 4. It is there-

Mode of transferring settled trust estates to new trustees; —necessity of a seisin in them to serve the uses.

UNDER A WILL OF SETTLED REAL ESTATE, PERSONALTY, MORTGAGE AND TRUST ESTATES.

NESSETH, that in further pursuance of the direction in this behalf contained in the said will, and in consideration of the premises, they, the said G. H. and I. K., do, and each of them doth by these presents, assign unto the said N. O., his executors, administrators, and assigns, ALL AND EVERY the leasehold messuages, lands, and tenements, (including leasehold premises and terms for years vested in the testator by way of mortgage), with their rights, members, and appurtenances, AND ALL the diamonds, plate, money, mortgage, and other debts, securities for money, AND ALL and singular other the personal estates expressed to be given and bequeathed by the said will to the said E. F., G. H., and I. K., their executors, administrators, and assigns, as such trustees as aforesaid, and now vested in the said G. H. and I. K., as aforesaid: AND ALL THE ESTATE &c., TO HAVE AND TO HOLD all and singular the said leasehold messuages, lands, and tenements, chattels, and personal estate, and all and singular other the premises hereinbefore assigned or expressed, and intended so to be unto the said N. O., his executors and administrators, UPON TRUST, and to the intent that the said N. O. may forthwith assign the same unto the said G. H., I. K., and L. M., their executors, administrators, and assigns, upon and for the trusts, intents,

ment of personalty to a provisional trustee.

Habendum in trust to reassign to the continuing trustees and new trustee on the trusts of the will.

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fore considered that the power to appoint new trustees and transfer the trust estate by necessity implies a power to revoke all the uses of the trust instrument, and to appoint the estate to a stranger, in trust to reconvey to the new trustees; see the works of Sir E. Sugden and Mr. Chance, ubi supra. When the direction is to convey simply, "upon and for the trusts, intents, and purposes, &c.," it is held sufficient that the old trustees convey to the new trustees so as to pass the estates vested in the trustees, (see infra, Precedent XX.); but when the direction is, that the trust estates shall be vested in the new trustees, "to the uses, &c.," the general practice is to effectuate this direction by a revocation, appointment, and conveyance, as in the precedent in the text. There can, however, be very little doubt that a simple conveyance is in all cases sufficient. In the text, the estates are vested in the provisional trustee by an appointment alone, and he alone reconveys; but it may be prudent that the old trustees should also convey, so as to effectuate the transfer of their vested estates, even if it be afterwards held that there was no ground to imply the power of revocation and appointment.

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and purposes, and with, under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which the said leasehold messuages, lands, and tenements, diamonds, money, mortgage, or other debts, securities for money, and all and singular other the personal estate and premises hereinbefore assigned, or expressed, and intended so to be, would now under and by virtue of the said will stand and be subject respectively in case this present indenture had not been made and executed, and the said L. M. had been originally made a trustee in and under the said will instead of the said E. F., and the name of the said L. M. had accordingly been in the said will inserted throughout, instead of the name of the said E. F.

Witnesseth further, conveyance of trust and mortgage estates.

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the direction in this behalf contained in the said will, and in consideration of the premises, they the said G. H. and I. K., do, and each of them doth by these presents (made in pursuance of an act of parliament passed in the 4th year of the reign of her present majesty, intituled "An Act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties" (*f*),) release unto the said

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Statute 4 & 5 Vict. c. 21; —abolition of the lease for a year.

(*f*) The act referred to is the 4 & 5 Vict. c. 21, which provides (sect. 1) "That every deed or instrument of release of a freehold estate, or deed or instrument purporting or intended to be a deed or instrument of release of a freehold estate, which shall be executed on or after the 15th day of May, 1841, *and shall be expressed to be made in pursuance of this act*, shall be as effectual for the purposes therein expressed, and shall take effect as a conveyance to uses or otherwise, and shall operate in all respects, both at law and in equity, as if the releasing party or parties who shall have executed the same had also executed in due form a deed or instrument of bargain and sale, or lease for a year, for giving effect to such release, although no such instrument of bargain and sale, or lease for a year, shall be executed;" the act also provides, that the release shall be chargeable with the additional stamp duty (except progressive duty) to which the lease for a year would have been liable. It is to be lamented that the act should have required a reference to itself, and the imposition of the lease for a year stamp, for thus the practitioner is still obliged to consider in what cases a lease for a year would have been requisite.

Effect of the act

The 2nd section of the act provides, that the recital or mention of a

UNDER A WILL OF SETTLED REAL ESTATE, PERSONALTY, MORTGAGE AND TRUST ESTATES.

N. O., and his heirs, ALL the manors, messuages, lands, tenements, and real estate which the said testator at the time of his death was solely seised of, or entitled to, or interested in by way of mortgage, or upon any trusts, with their rights, members, easements, and appurtenances; AND ALL THE ESTATE &c., TO HAVE AND TO HOLD the said manors, messuages, lands, and all and singular other the premises hereinbefore released, or expressed and intended so to be, unto the said N. O., his heirs and assigns, TO THE USE of the said G. H., I. K., and L. M., their heirs and assigns, but with, under, and subject to the several equities of redemption and trusts now subsisting in or concerning such several estates and premises respectively. AND EACH OF THEM the said G. H. and I. K., so far as relates to his own acts and deeds, doth hereby for himself, his heirs, executors, and administrators, covenant with the said N. O., his heirs, executors, administrators, and assigns respectively, that they the said G. H. and I. K., respectively have not at any time heretofore made, done, committed, or executed, or knowingly, or willingly permitted, or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof they are in anywise prevented or hindered from exercising the power of

Habendum.

To the use of the continuing trustees and new trustee.

Covenant by the old trustees with the provisional trustee against incumbrances.

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lease for a year in a release, executed before the passing of the act, shall be conclusive evidence of such lease for a year having been made and executed, "and such deed or instrument of release shall also have the like effect as if the same had been executed after the 15th day of May, 1841." The effect of these words is not very clear; for the instrument referred to being made before the act, cannot, of course, contain any reference to the act; and, therefore, if made after the 15th of May, 1841, would have been inoperative for want of such reference. Probably, however, the words, "and had contained a proper reference to this act, and had been duly stamped," or some similar expressions, will be held to have been implied.

on releases executed before the passing of the act, and of which the lease for a year has been lost.

It has been determined, with the concurrence of several eminent conveyancers, to take the opportunity of the change required by the new act, to introduce an alteration in the form of all deeds, viz. to omit the past tense of the operative words, which has long been an unmeaning form. See ante, Vol. 3, p. 195, n. (*h*).

Omission of the past tense of operative words.

UNDER A WILL OF SETTLED REAL ESTATE, PERSONALTY, MORTGAGE AND TRUST ESTATES.

revocation, and new appointment hereinbefore exercised by them, or expressed and intended so to be, or whereby or by reason or means whereof the said premises hereinbefore assigned and released respectively, or expressed and intended so to be, or any of them, or any part thereof respectively, are, is, can, shall, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever. IN WITNESS &c.

XIX.

RECONVEYANCE AND REASSIGNMENT.

RECONVEYANCE *and* REASSIGNMENT *by the provisional Trustee, to be indorsed on the last Deed.*

Parties.

THIS INDENTURE, made &c., BETWEEN the within-mentioned N. O., [*provisional trustee*], of the one part; and the within-mentioned G. H., I. K., and L. M., [*trustees*], of the other part; WITNESSETH, that in pursuance of the trust in this behalf by the within-written indenture reposed in the said N. O., he the said N. O. doth, by these presents, (made in pursuance of an act, &c., *see supra, p. 266*)

Witnesseth reconveyance by the provisional trustee of the freehold estates.

release unto the said G. H., I. K., and L. M., and their heirs, ALL AND SINGULAR the freehold messuages, lands, tenements, and hereditaments, with their rights, easements, and appurtenances, by the within-written indenture directed, limited, and appointed, to the use of the said N. O., and his heirs, or expressed and intended so to be as in the within-written indenture is mentioned; AND ALL

Habendum to the continuing and new trustees.

THE ESTATE &c., TO HAVE AND TO HOLD the said freehold messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore released or expressed, and intended so to be, unto the said G. H., I. K., and L. M., and their heirs, To THE USES upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, to, for, upon, with, under, and subject to which the same freehold estates, hereditaments, and premises, would now under and by

To the uses of the will.

RECONVEYANCE AND REASSIGNMENT.

virtue of the said will stand and be limited or subject in case the within-written indenture, and this present indenture, had not been made and executed, and the said L. M. had been originally made a devisee to uses in, and trustee in and under the said will, instead of the within-named E. F., and accordingly the name of the said L. M. had in the said will been inserted throughout, instead of the name of the said E. F. AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the trust in this behalf by the within-written indenture reposed in the said N. O., he the said N. O. doth, by these presents, assign unto the said G. H., I. K., and L. M., their executors, administrators, and assigns, ALL and singular the leasehold messuages, lands, and tenements, (including the leasehold premises and terms of years by way of mortgage), diamonds, plate, money, mortgage, and other debts, securities for money, and all and singular other the personal estate by the within-written indenture assigned to the said N. O., his executors, administrators, and assigns, or expressed and intended so to be. AND ALL THE ESTATE &c., TO HAVE AND TO HOLD the said leasehold messuages, lands, and tenements, chattels, and personal estate, and all and singular other the premises hereinbefore assigned or expressed, and intended so to be unto the said G. H., I. K., and L. M., their executors, administrators, and assigns, UPON AND FOR THE TRUSTS, intents and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, with, under, and subject to which the same would now under and by virtue of the said will stand and be subject respectively in case the within-written indenture and these presents had not been made and executed, and the said L. M. had been originally made a trustee in and under the said will instead of the said E. F., and accordingly the name of the said L. M. had in the said will been inserted throughout, instead of the name of the said E. F. (*a*). IN WITNESS &c.

Witnesseth further, reassignment by the provisional trustee of the personal estate.

Habendum to the continuing and new trustees;

—upon the trusts of the will.

(*a*) In strictness, a covenant by the provisional trustee against incumbrances ought to be introduced, but as the appointment or conveyance, and reconveyance, are always executed at the same time, it can hardly be deemed necessary.

XX.

BY INDORSEMENT OF SETTLED REAL ESTATE.

APPOINTMENT (*by Indorsement*) *under a Power in a* SETTLEMENT *of a new Trustee, of* SETTLED REAL *Estate in the place of a* RETIRING *Trustee; the Appointment being effectuated by a* CONVEYANCE *only of the* ESTATES *vested in the Trustees to preserve* CONTINGENT REMAINDERS.

Parties.

THIS INDENTURE, made &c., BETWEEN the within-named A. B. and C. B., his wife, [*the appointors*], of the first part; the within-named E. F. and G. H., [*the present trustees*], of the second part; and I. K., of &c., [*the new trustee*], of the third part (*a*).

Recital of the desire of a trustee to be discharged;

WHEREAS the said G. H. is desirous of being discharged from the trusts and powers reposed in or given to him by the within-written indenture,

—and of the desire to appoint a new trustee in his place.

AND WHEREAS the said A. B. and C. B. are desirous of appointing the said I. K. to be a trustee of the within-written indenture, in the stead or place of the said G. H. (*b*),

Witnesseth appointment of the new trustee.

NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire, and pursuant to and by force and virtue and in exercise and execution of the power or authority for this purpose by the within-written indenture given to the said A. B. and C. B., and of every or any other power or authority in anywise enabling them in this behalf, they the said A. B. and C. B. do, and each of them doth, by this deed or instrument in writing, sealed and delivered by them in the presence of, and attested by, the two credible persons whose names are intended to be hereunder

(*a*) The settlement on which the appointment in the text was indorsed was a post nuptial settlement, so that the ordinary recital of the solemnization of the marriage is unnecessary. See the note, supra, p. 266, and the form of the recital, infra, Precedent XXVII., p. 291.

(*b*) See supra, p. 263, n. (*b*).

written as witnesses attesting the sealing and delivery of these presents by them, the said A. B. and C. B., nominate, substitute, and appoint the said I. K. to be a trustee in the stead and place of the said G. H., for the purposes of the within-written indenture, or such of the same purposes as are now subsisting or capable of taking effect (*c*). AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf in the within-written indenture contained, and in consideration of the premises, they, the said E. F. and G. H., at the request and by the direction of the said A. B. and C. B. (testified by their being parties to and executing these presents), Do, and each of them doth, by these presents (made in pursuance of an act of Parliament, passed &c., *supra, page* 266), release unto the said I. K., and his heirs, ALL THOSE several undivided parts or shares by the within-written indenture released or expressed, and intended so to be, of and in the messuages or tenements, rectory, tithes, lands, and hereditaments in the within-written indenture described, and of and in their and every of their appurtenances; And all and singular other the hereditaments (if any) by the within-written indenture appointed or released, or expressed and intended so to be; AND ALL THE ESTATE, &c., of, in, to, or out of the said premises, or any of them; TO HAVE AND TO HOLD the said undivided parts or shares and hereditaments, and all and singular other the premises hereby released, or expressed and intended so to be, unto the said I. K. and his heirs, TO THE USE of the said E. F. and I. K., and their heirs, for the estates limited to the said E. F. and G. H., and their heirs, by the within-written indenture, and upon and for the trusts, intents and purposes upon and for which the same premises would now under and by virtue of the within-written indenture stand and be subject, in case these presents had not been made

BY INDORSEMENT OF SETTLED REAL ESTATE.

Witnesseth further, conveyance of the trust estates to the new trustee.

Parcels.

Habendum.

To the use of the continuing and new trustees on the trusts of the settlement.

(*c*) See supra, p. 263, n. (*c*). The words, "or such of the same purposes as are now subsisting or capable of taking effect," are applicable only when some of the purposes have ceased or failed, and are not essential in any case.

BY INDORSEMENT OF SETTLED REAL ESTATE.

or executed, and the said I. K. had been originally made a party to the within-written indenture, and the lease for a year whereon the same is grounded, instead of the said G. H., and accordingly the name of the said I. K. had in the said indenture and lease for a year been inserted throughout, instead of the name of the said G. H., and the said I. K. had executed the said indenture instead of the said G. H. (*d*). [*Covenant by G. H. with I. K. and his heirs, against incumbrances, ante, Vol. 3, p. 249; see too, infra, p. 283*]. IN WITNESS &c.

XXI.

IN THE PLACE OF A DECEASED AND RETIRING TRUSTEE.

APPOINTMENT (*by Indorsement*) *under a* POWER *in a* SETTLEMENT *of* TWO *new Trustees, of* SETTLED REAL *Estate, in the Place of One* DECEASED, *and One* RETIRING *Trustee, the Appointment being made* AS WELL IN RESPECT OF SEVERAL DEEDS INDORSED *on the Settlement* AS OF *the* SETTLEMENT *itself.*

Parties.

THIS INDENTURE, made &c., BETWEEN the within-named X. Y., now A. B., [*the donee of the power of appointing new trustees*], of the first part; the within-named E. F. [*the retiring trustee*], of the second part; and I. K. of &c., and L. M. of &c., [*new trustees*], of the third part. [*Recitals of the deaths of certain persons, whereby the power of appointing new trustees became vested in A. B., and of the death of G. H., one of the original trustees* (*a*)]. AND WHEREAS

Recital of the death of one trustee, and

—of the desire of the other to be discharged;

(*d*) As to the method by which the trust estates are to be vested in the new trustees, see supra, p. 264, n. (*e*).

The words relating to the execution of the settlement will of course be inserted only when the settlement was actually executed by the old trustee.

(*a*) In the case to which this precedent refers, the indorsed deeds had contained the recital of the solemnization of the marriage, and of several other events which had taken place since the execution of the settlement. See the note, supra, p. 261, and the form, infra, Precedent XXVII., p. 291.

IN THE PLACE OF A DECEASED AND RETIRING TRUSTEE.

the said E. F. is desirous of being discharged from the trusts reposed in him by the within-written indenture, and the several indentures indorsed thereon: AND WHEREAS the said A. B. is desirous of appointing the said I. K. and L. M. respectively, to be trustees under the within-written indenture, and the several indentures indorsed thereon, in the place and stead of the said E. F. and G. H. respectively (*b*). NOW THIS INDENTURE WITNESSETH, that, for effectuating the said desire, and pursuant to and by force and virtue &c. [*supra, p.* 270], he the said A. B., doth &c., [*supra, p.* 271], nominate and appoint the said I. K. and L. M. respectively, to be trustees in the place and stead of the said E. F. and G. H. respectively, for the purposes of the within-written indenture, and the said indentures indorsed thereon, or such of the same purposes as are now subsisting or capable of taking effect (*c*): AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf in the within-written indenture contained, and in consideration of the premises, he the said E. F., at the request and by the direction of the said A. B., (testified by his being a party to and executing these presents), doth, by these presents, (made in pursuance of an act &c., *supra, p.* 266), release unto the said I. K. and L. M., and their heirs, ALL AND SINGULAR the royalty, barony, manors, or lordships, or reputed manors or lordships, third part, capital, and other messuages, farms, lands, tenements, and other hereditaments by the within-written indenture appointed, and granted, and released, or expressed, and intended so to be; AND ALL AND SINGULAR other the hereditaments whatsoever, if any now vested in him the said E. F., as a trustee, under the within-written indenture, and the said indentures indorsed thereon, or any of them, with their rights, members, easements, and appurtenances, AND ALL THE ESTATE &c., TO HAVE AND TO HOLD the said royalty, barony, manors, or lordships, or reputed manors or lord-

—of the desire to appoint two new trustees.

Witnesseth appointment of two new trustees.

Witnesseth further, conveyance by the retiring trustee to the new trustees.

Parcels.

Habendum.

(*b*) See supra, p. 263, n. (*b*).

(*c*) See supra, p. 263, n. (*c*), p. 271, n. (*c*).

IN THE PLACE OF A DECEASED AND RETIRING TRUSTEE.

ships, third part, capital, and other messuages, farms, lands, tenements and hereditaments, and all and singular other the premises hereinbefore released or expressed, and intended so to be unto the said I. K. and L. M., and their heirs, To the uses, &c. of the settlement. To THE USES upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, to, for, upon, with, under, and subject to which the same hereditaments and premises would now under and by virtue of the within-written indenture, stand and be limited or subject, in case these presents had not been made and executed, and the said I. K. and L. M. respectively had been originally made parties to the within-written indenture, and the lease for a year, whereon the same is grounded, and the several indentures indorsed thereon, instead of the said E. F. and G. H. respectively, and accordingly the names of the said I. K. and L. M. respectively had in the said within-written indenture, and the lease for a year, whereon the same is grounded, and the several indentures indorsed thereon, been inserted throughout, instead of the names of the said E. F. and G. H. respectively, and the within-written indenture had been referred to accordingly in the several indentures indorsed thereon (*d*). AND THE SAID E. F. &c. Covenant. [*Covenant by E. F. "with I. K. and L. M., and their heirs" against incumbrances, ante, Vol. 3, p. 241; see too, infra, p. 283*]. IN WITNESS &c.

(*d*) See supra, p. 272, n. (*d*).

XXII.

APPOINTMENT *of a new Trustee, under a Power in a* WILL, *in the place of one* DECLINING *to act, the Trust and Mortgage Estates of the Testator having been devised to two only of the three Trustees.* CONVEYANCE *of* FREEHOLDS *and* COVENANT *to* SURRENDER COPYHOLDS *to the use of the continuing and new Trustees.* ASSIGNMENT *of* LEASEHOLDS *and* PERSONALTY *to a* PROVISIONAL *Trustee, In* TRUST *to* REASSIGN *to the continuing and new Trustees.*

OF A WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.

THIS INDENTURE, made &c., BETWEEN C. D., of &c., widow, and G. H., of &c., [*continuing trustees*], of the first part; E. F., of &c., [*declining trustee*], of the second part; I. K., of &c., [*new trustee*], of the third part; and N. O., of &c., [*provisional trustee*], of the fourth part. Parties.

WHEREAS, A. B., of &c., duly made, signed, and published his last will and testament in writing, bearing date the —— day of ——, and thereby, after bequeathing unto his wife, the said C. D., an annuity of £——, during her life, to be paid by equal quarterly payments, and the first quarterly payment to be made on the expiration of three calendar months next after his decease, gave to the said C. D., E. F., and G. H., so much of his plate as his said wife should, within three calendar months after his decease, by some memorandum under her hand, select, not exceeding in the whole, five hundred ounces, Upon trust, to permit the same to be used and enjoyed by his said wife during her life, and after her decease, with the residue of his plate thereinafter bequeathed; and after bequeathing certain legacies to his children therein named, and certain annuities to X. and Y., the said testator devised his house called ——, at ——, in

Recital of the will;

—bequeathing certain plate;

OF A WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.

the county of ——, and all the freehold and copyhold and customary lands thereunto belonging, and the tithes thereof, unto and to the use of the said C. D., E. F., and G. H., their heirs and assigns for ever, upon the trusts, and with, under, and subject to the powers and provisoes therein declared and contained of and concerning the same. And as to his freehold land and hereditaments, at or near —— aforesaid, and his house in —— square, in the county of ——, and all his freehold estates in the counties of —— and ——, and all other his real estate whatsoever and wheresoever, not thereinbefore specifically bequeathed (except his estates in the island of ——, and his copyhold or customary estates), he devised the same (subject nevertheless to any mortgage or mortgages thereon, and also subject to the payment of the several legacies or sums thereinbefore provided for his children, and to the annuities thereinbefore provided for his said wife, and for the said X. and Y.), to the said C. D., E. F., and G. H., their heirs and assigns, To the uses, upon the trusts, and subject to the powers and provisoes thereinafter declared and contained of and concerning the same; And the said testator, by his said will, gave and devised all his plantations and estates in the said Island of ——, and the cattle, stock, and plantation implements and utensils thereon or belonging thereto, subject as with respect to his other real estate was mentioned, unto the said C. D., E. F., and G. H., their heirs, executors, administrators, and assigns, To such and the same trusts as he had thereinbefore declared with respect to his said last-mentioned real estate; And he empowered the said C. D., E. F., and G. H., and the survivors and survivor of them, and the heirs of such survivor, or their or his assigns, from time to time, during such time as therein mentioned, by any deed or deeds sealed and delivered and attested as therein mentioned, to appoint by way of lease, all or any part or parts of the said several premises thereinbefore devised to any person or persons for any term or terms of years, under the restrictions therein mentioned; And he empowered the said C. D., E. F., and G. H., and the survivors and survivor of them, and the

—and certain freehold and copyhold lands;

—and other freehold lands;

—and certain West India plantations;

—with powers of leasing;

—and management;

OF A WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.

heirs, executors, or administrators of such survivor, their or his assigns, from time to time, as the yearly rents and profits of his said plantations and estates, in the said Island of —— should be received by them or him, under the devise and trust thereinbefore contained, at any time or times to exercise such powers for the cultivation, management, and improvement of the same premises as are therein mentioned and contained. And he devised all his copyhold and customary estates in the counties of —— and ——, and elsewhere, not thereinbefore specifically devised, and the appurtenances, unto and to the use of the said C. D., E. F., and G. H., their heirs and assigns, upon the trusts, and with, under, and subject to the powers and provisoes therein mentioned or referred to; And he bequeathed all his leasehold estates near or adjacent to his house in —— square, or occupied therewith, and at —— and ——, in the said county of——, or elsewhere, unto the said C. D., E. F., and G. H., their executors, administrators, and assigns, upon the trusts, and with, under, and subject to the powers and provisoes therein mentioned or referred to; And he gave and bequeathed all his household furniture, plate, (subject to the right of his said wife to use the specified quantity, not exceeding five hundred ounces, for her life, as aforesaid), books, pictures, prints, statues, and marbles, to the said C. D., E. F., and G. H., their executors, administrators, and assigns, upon the trusts therein mentioned; and as to all the rest and residue of his personal estate and effects whatsoever and wheresoever, remaining after payment of all his funeral and testamentary expenses and debts, and the several legacies and annuities thereinbefore bequeathed, the said testator bequeathed the same unto the said C. D., E. F., and G. H., their executors, administrators, and assigns, upon the trusts therein mentioned, and he directed the said trustees or trustee for the time being, to permit his said wife to inhabit, free from rent and taxes, such one of his houses as she should within three calendar months after his decease select, until one of his sons should have attained the age of twenty-one years, but if neither of his sons should live to attain that age, then during her natural

—and devising copyholds;

—and bequeathing leaseholds;

—and plate and furniture;

—and the residue of personal estate;

—and containing several special provisions;

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life; and also, notwithstanding the several provisions thereinbefore contained, he directed the said trustees or trustee for the time being, with and out of the annual produce of his said estates and effects thereinbefore devised and bequeathed, to raise the annuities thereinbefore bequeathed to his said wife, and to the said X. and Y.; and also to raise, during the minority of each of his sons, and during such time as each of his daughters remained under twenty-one, and unmarried, such sums of money for their respective maintenance and education, as to his said trustees or trustee for the time being should appear proper, and which sums were to be borne and paid out of his said estates, and not to be charged to or from any part of the legacies bequeathed to his said children respectively; and he declared that the annual produce of his estate and effects, the application of which was not thereinbefore specifically directed, should be accumulated by his said trustees or trustee, in augmentation of his personal estate; and he devised and bequeathed all the estates in him, upon any trusts, or by way of mortgage, and which he had power to dispose of by his said will, with their appurtenances, unto and to the use of the said E. F. and G. H., their heirs, executors, administrators, and assigns, according to the true intent, nature and quality thereof respectively, upon trust to hold or dispose of the said trust estates, in the manner in which they ought to be held or disposed of, pursuant to the said trusts, and upon payment of the money secured on mortgage, to convey or assign the estates in mortgage to the person or persons entitled thereto for the time being: And the said testator appointed the said C. D., E. F., and G. H., executors of his said will, and he thereby empowered his said trustees or trustee for the time being, to give receipts for any money payable to them, her, or him, under his said will: And by his said will, the said testator provided that, &c. [*Power to appoint new trustees, with the direction to transfer the trust estate, and the declaration as to the powers of the new trustees recited verbatim* (*a*).]

—and disposing of trust and mortgage estates;

—and appointing executors with power to give receipts;

—and giving a power to appoint new trustees.

(*a*) As to the method of reciting, in a deed appointing new trustees,

OF A WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.

AND WHEREAS the said testator died on the —— day of —— last, without having revoked or altered his said will, and on the —— day of —— last, the said will was proved in the prerogative court of the Archbishop of Canterbury, by the said C. D. alone, power being reserved to the other executors to come in and prove the same: AND WHEREAS the said E. F. has declined to act in the trusts of the said will (*b*), AND WHEREAS the said C. D. and G. H. are desirous of appointing the said I. K. to be a trustee in the stead or place of the said E. F., for the purposes of the said will, according to the powers and provisions therein contained (*c*): NOW THIS INDENTURE WITNESSETH, that pursuant to, and by force and virtue, and in exercise and execution of the power or authority for this purpose by the said will given to the said C. D. and G. H., as the continuing trustees under the same will, and of every or any other power or authority in anywise enabling them in that behalf, they, the said C. D. and G. H., do by this deed, by them sealed and delivered in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses to the sealing and delivery of these presents by them, the said C. D. and G. H., appoint the said I. K. to be a trustee in the place of the said E. F., for the purposes of the said will (*d*): AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf contained in the said will, and in consideration of the premises, she, the said C. D., as to such of the hereditaments intended to be hereby released, as were not by the said will devised to the said E. F., and G. H., their heirs and assigns, as hereinbefore is mentioned,

Recital of the testator's death and the probate of his will;

—of one of the trustees having declined to act;

—of the desire to appoint a new trustee.

Witnesseth appointment of the new trustee.

Witnesseth further, conveyance of the freehold trust estates.

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the will or other instrument creating the trust, see the note, supra, p. 261. In the precedent in the text, the will seems to be recited more in detail than is necessary; for nothing appears to be gained by noticing the powers of leasing, the power to give receipts, and the like.

(*b*) When a trustee declines to act, it is desirable that he should execute a deed of disclaimer; and if such a deed be executed, it should be recited in the deed appointing the new trustee. See supra, p. 263.

(*c*) See supra, p. 263, n. (*h*).

(*d*) See supra, p. 263, n. (*d*).

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Parcels.

And the said E. F. and G. H., as to all the hereditaments intended to be hereby released, do, and each of them doth, by these presents (made in pursuance of an act &c. *see supra*, *p.* 266), release unto the said N. O. and his heirs ALL AND SINGULAR the freehold messuages, lands, tenements, tithes, plantations, hereditaments, and other real estate, not being of copyhold tenure, situate, lying, and being, or arising, in England or elsewhere, by the hereinbefore recited will devised, or expressed to be devised, to the said C. D., E. F., and G. H., their heirs and assigns, as hereinbefore is mentioned, with their appurtenances: AND ALSO all the freehold estates and hereditaments vested in the said testator, upon any trusts, or by way of mortgage, and by the said will devised to the said E. F. and G. H., their heirs and assigns, as hereinbefore is mentioned, with their appurtenances; AND ALL THE ESTATE, &c. of them, the said C. D., E. F., and G. H., and every of them, of, in, and to the same premises, and every part thereof, respectively, To

Habendum to the uses and upon the trusts of the will.

HAVE AND TO HOLD all and singular the said hereditaments and premises hereby released, or intended so to be, unto the said N. O. and his heirs, to the uses following; that is to say: AS TO ALL such and so many of the same hereditaments as by the hereinbefore recited will were devised, or expressed to be devised to the said C. D., E. F., and G. H., their heirs and assigns, with their appurtenances, To THE USE of the said C. D., G. H., and I. K., their heirs and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, with, under, and subject to which the said messuages, lands, tenements, tithes, plantations, hereditaments, and premises, hereinbefore released or expressed, and intended so to be, would now, under, and by virtue of the said will, stand and be subject respectively, in case this present indenture had not been made and executed, and the said I. K. had been originally made a trustee, in and under the said will, instead of the said E. F., and the name of the said I. K. had accordingly been in the said will inserted throughout, instead of the name of the said E. F., AND AS TO all such and so many of the same

As to the hereditaments devised by the will to three trustees.

As to the trust and mortgage

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hereditaments as were vested in the said testator, upon any trusts, or by way of mortgage, and were by the said will devised to the said E. F. and G. H., their heirs and assigns, as hereinbefore is mentioned, with their appurtenances, To THE USE of the said G. H. and I. K., their heirs and assigns, upon, with, under, and subject to the several trusts and equities of redemption now subsisting in, or concerning the several last-mentioned premises respectively: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the direction in this behalf contained in the said will, and in consideration of the premises, each of them the said C. D., E. F., and G. H., so far only as relates to her or his own acts and deeds, and the acts and deeds of her or his own heirs, doth hereby for herself and himself, and her and his heirs, executors and administrators, covenant with the said N. O., his executors and administrators, that they, the said C. D., G. H., and E. F., or their heirs, shall and will, at the costs and charges of the trustees under the said will, at the next, or some subsequent courts, to be holden in and for the several manors of which the several copyhold hereditaments hereinafter mentioned are respectively holden, well and effectually surrender, or cause to be surrendered, into the hands of the lords or ladies of the same manors respectively, according to the several customs thereof, ALL and singular the several copyhold lands, tenements, and hereditaments by the hereinbefore recited will devised, or expressed to be devised as hereinbefore is mentioned, with their appurtenances, To THE USE of the said C. D., G. H., and I. K., their heirs and assigns, to be holden according to the several customs of the said manors, whereof the aforesaid hereditaments are respectively holden as aforesaid, and by and under the several rents, fines, heriots, suits, and services therefore respectively due, and of right accustomed, but upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, with, under, and subject to which the said hereditaments and premises hereinbefore covenanted to be surrendered, would now, under and by virtue of the said will, stand and be subject respec-

estates devised to two only of the trustees.

Witnesseth further, covenant to surrender the copyholds.

Parcels.

To the use of the continuing and new trustees on the trusts of the will.

OF A WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.

tively, in case this present indenture had not been made and executed, and the said intended surrender had not been made, and the said I. K. had been originally made a trustee in and under the said will, instead of the said E. F., and the name of the said I. K. had accordingly been in the said will inserted throughout, instead of the name of the said E. F.: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said direction in this behalf contained in the said will, and in consideration of the premises, the said C. D. as to all the personal estate intended to be hereby assigned, (except the estates by the said will bequeathed to the said E. F. and G. H., their executors, administrators and assigns, as hereinbefore is mentioned), And the said E. F. and G. H. as to all the personal estate intended to be hereby assigned, do, and each of them doth, by these presents, assign unto the said N. O., his executors, administrators, and assigns, ALL the leasehold lands and hereditaments, with their appurtenances; AND all the plate, household furniture, books, pictures, prints, statues, marbles, personal estate, and effects whatsoever by the said will bequeathed to the said C. D., E. F., and G. H., their executors, administrators, and assigns, as hereinbefore is mentioned: AND ALSO all the hereditaments vested in the said testator for any term or terms of years, upon any trusts or by way of mortgage; And by the said will bequeathed to the said E. F., and G. H., their executors, administrators, and assigns, as hereinbefore is mentioned, with the appurtenances: AND ALL THE ESTATE &c., TO HAVE AND TO HOLD the said leasehold lands and hereditaments, plate, household furniture, books, pictures, prints, statues, marbles, personal estate and effects, and hereditaments, and all and singular other the premises hereinbefore assigned or expressed, and intended so to be, unto the said N. O., his executors, administrators, and assigns, UPON TRUST, and to the intent that the said N. O. may forthwith assign the same premises, (except the said premises bequeathed to the said E. F. and G. H., their executors, administrators, and assigns, as hereinbefore is mentioned), unto the said C. D.,

Witnesseth further, assignment of the personal estate.

Parcels.

Habendum to a provisional trustee, in trust to reassign to the continuing and new trustees.

As to all the property, except that bequeathed to two trustees only.

OF A WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.

G. H., and I. K., their executors, administrators, and assigns, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which the same premises would now, under and by virtue of the said will, stand and be subject respectively, in case this present indenture had not been made and executed, and the said I. K. had been originally made a trustee in and under the said will, instead of the said E. F., and the name of the said I. K. had accordingly been in the said will inserted throughout, instead of the name of the said E. F.; AND MAY forthwith assign the premises vested in the said testator for any term or terms of years, upon any trusts, or by way of mortgage, and by his said will bequeathed to the said E. F. and G. H., their executors, administrators, and assigns, unto the said G. H. and I. K., their executors, administrators, and assigns, upon, with, under, and subject to the several trusts and equities of redemption now subsisting in, or concerning the said several last-mentioned premises respectively; and so and in such manner as if the said premises had been originally by the said will bequeathed to the said G. H. and I. K., their executors, administrators, and assigns, instead of to the said G. H. and E. F., their executors, administrators, and assigns, and the name of the said I. K. had accordingly been in the said will inserted throughout, instead of the name of the said E. F.: AND EACH OF THEM the said C. D., E. F., and G. H., so far as relates to her and his own acts and deeds, doth hereby, for herself and himself, her and his heirs, executors, and administrators, covenant with the said N. O., his heirs, executors, administrators, and assigns respectively, that they the said C. D., E. F., and G. H. respectively, have not at any time heretofore made, done, committed, or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter, or thing whereby or by reason or means whereof the said hereditaments and premises hereinbefore released or expressed, and intended so to be, and covenanted to be surrendered respectively, or any of them, or any part thereof, or the said leasehold hereditaments, chattels, and per-

As to the property bequeathed to two trustees only.

OF A WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.

sonal estate, and premises hereinbefore assigned, or expressed, and intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever. IN WITNESS &c.

XXIII.

REASSIGNMENT.

REASSIGNMENT *by* INDORSEMENT *on the last Deed from the* PROVISIONAL *Trustee to the continuing and new Trustees.*

Parties.

THIS INDENTURE, made &c., BETWEEN the within-named N. O., [*provisional trustee*], of the one part; and the within-named C. D., G. H., and I. K., [*the continuing and new trustees*], of the other part; WITNESSETH, that,

Witnesseth reassignment to the three trustees of all the property bequeathed by the will to three trustees.

in pursuance of the trust in this behalf reposed in the said N. O., by the within-written indenture, he the said N. O., doth, by these presents, assign unto the said C. D., G. H., and I. K., their executors, administrators, and assigns, ALL and singular the leasehold lands and hereditaments, with the appurtenances; And all the plate, household furniture, books, pictures, prints, statues, and marbles, and all and singular other the personal estate and effects whatsoever, by the within-written indenture assigned to the said N. O., his executors, administrators, and assigns, (except the hereditaments by the within-recited will bequeathed to the said E. F. and G. H., their executors, administrators, and assigns, as in the within-written indenture is mentioned;) AND ALSO by way of assignment, and not of exception, ALL THE ESTATE, &c., TO HAVE AND TO HOLD all and singular the said leasehold hereditaments, chattels, and premises hereinbefore assigned or expressed, and intended so to be, unto the said C. D., G. H., and I. K., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with,

Habendum upon the trusts of the will.

under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which the same would now under and by virtue of the said within-recited will stand and be subject respectively, in case the within-written indenture and these presents had not been made and executed, and the said I. K. had been originally made a trustee in and under the said will, instead of the said E. F., and the name of the said I. K. had accordingly been inserted in the said will throughout, instead of the name of the said E. F. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the trust in this behalf reposed in the said N. O., by the within-written indenture, he the said N. O. doth, by these presents, assign unto the said G. H. and I. K., their executors, administrators, and assigns, ALL the hereditaments vested in the within-named testator, for any term or terms of years, upon any trusts, or by way of mortgage, and by the said within-recited will bequeathed to the said G. H. and E. F., their executors, administrators, and assigns, with their appurtenances, AND ALL THE ESTATE &c., TO HAVE AND TO HOLD all and singular the said premises lastly hereinbefore assigned or expressed, and intended so to be, unto the said G. H. and I. K., their executors, administrators, and assigns, upon, with, under, and subject to the trusts and equities of redemption, now subsisting in the said last-mentioned premises respectively. IN WITNESS &c.

REASSIGNMENT.

Witnesseth further, assignment to two trustees of the trust and mortgage estates by the will bequeathed to two trustees.

Habendum according to the will.

XXIV.

APPOINTMENT (*by Indorsement*) *of a new Trustee of a* TERM *of* YEARS *limited by a* SETTLEMENT.

OF A TERM OF YEARS.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. and C. B., his wife, [*the appointors*], of the first part; the within-named E. F.

Parties.

OF A TERM OF YEARS.

Recitals.

and G. H., [*the old trustees*], of the second part; I. K., of &c., [*the new trustee*], of the third part; and N. O., of &c., [*provisional trustee*], of the fourth part; WHEREAS &c., [*recital of the desire of G. H. to be discharged from the trusts, and of the desire of A. B. and C. B. to appoint I. K. to be the new trustee, supra, p. 270*] (*a*).

Witnesseth appointment of the new trustee.

NOW THIS INDENTURE WITNESSETH, that &c., [*appointment of I. K. to be a trustee in the place of G. H., supra, p. 270*].

Witnesseth further, assignment by the old trustees to a provisional trustee.

AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf in the within-written indenture contained, they the said E. F. and G. H., at the request and by the direction of the said A. B. and C. B., his wife, and also of the said I. K., (testified by their severally being parties to and executing these presents), do, and each of them doth by these presents assign unto the said N. O., his executors and administrators, ALL AND SINGULAR the messuages,

Parcels.

lands, tenements, and hereditaments, by the within-written indenture limited to the use of the said E. F. and G. H., their executors, administrators, and assigns, for the within-mentioned term of —— years, with their rights, easements, and appurtenances; AND ALL THE ESTATE, &c., TO HAVE

Habendum for the term.

AND TO HOLD all and singular the said messuages, lands, tenements, hereditaments, and premises hereinbefore assigned or expressed, and intended so to be, unto the said N. O., his executors and administrators, for the residue now to come of the within-mentioned term of —— years, UPON

In trust to reassign to the continuing and new trustees.

TRUST and to the intent that the said N. O., his executors or administrators may forthwith assign the same unto the said E. F. and I. K., their executors, administrators, and assigns, for the residue now to come of the said term of —— years, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, for, with, under, and subject to which the said premises would now under and by virtue of the within-

(*a*) The settlement referred to was post nuptial, so that a recital of the solemnization of the marriage is not required in this deed. See the note, supra, p. 261, and the form of the recital, infra, p. 291.

written indenture stand and be subject, in case this present indenture had not been made and executed, and the said I. K. had been originally made a party to and trustee of the within-written indenture instead of the said G. H., and the name of the said I. K. had accordingly been in the said indenture inserted throughout, instead of the name of the said G. H. (*b*). [*Covenant by E. F. and G. H., severally, with N. O., against incumbrances, supra, p. 283.*] IN WITNESS &c.

OF A TERM OF YEARS.

Covenant.

XXV.

REASSIGNMENT (*to be also indorsed on the Settlement*) *of the Premises assigned by the last Deed.*

REASSIGNMENT.

THIS INDENTURE, made &c., BETWEEN the above-named N. O., of the one part; and the above-named E. F. and I. K., of the other part; WITNESSETH, that in pursuance of the trust in this behalf by the above-written indenture reposed in him, He the said N. O., doth by these presents assign unto the said E. F. and I. K., their executors, administrators, and assigns, ALL AND SINGULAR the messuages, lands, tenements, hereditaments, rights, easement, and appurtenances, by the above-written indenture assigned to the said N. O., his executors and administrators; AND ALL THE ESTATE &c., TO HAVE AND TO HOLD all and singular the said messuages, lands, tenements, hereditaments, and premises hereinbefore assigned or expressed, and intended so to be, unto the said E. F. and I. K., their executors, administrators, and assigns, for the residue now to come of the above and within-mentioned term of —— years; UPON AND FOR the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, for, with, under, and

Parties.

Witnesseth reassignment by the provisional to the continuing and new trustees.

Habendum upon the trusts of the settlement.

(*b*) See supra, p. 272, n. (*d*).

REASSIGNMENT.

subject to which the said premises would now under and by virtue of the within-written indenture stand and be subject, in case this present indenture and the above-written indenture had not been made and executed, and the said I. K. had been originally made a party to and trustee of the within-written indenture, instead of the within-named G. H., and the name of the said I. K. had accordingly been in the said indenture inserted throughout, instead of the name of the said G. H. (*a*). IN WITNESS &c.

XXVI.

OF SUMS OF STOCK APPROPRIATED.

APPOINTMENT *of a new Trustee of a* WILL, *in the place of a* DECEASED *Trustee, where the Testator's Estate had been fully administered, and* CERTAIN SUMS *of* STOCK *had been* APPROPRIATED, *and remained to answer* SPECIFIC TRUSTS.

Parties.

THIS INDENTURE, made &c., BETWEEN G. H., of &c., [*surviving trustee*], of the first part; ——, [*parties beneficially interested*], of the second part; and I. K., of &c., [*new trustee*], of the third part. [*Recital of the will of the testator, particularly of the special trusts remaining to be performed, so far as to shew the interests of the persons, parties of the second part. Recital of the death of the testator, and of the probate, supra, p.* 279]. AND WHEREAS the funeral and testamentary expenses and debts of the said testator, and the legacies given by his said will, were long since paid or satisfied, and all the annuities given by his said will, except the said annuity of £—— to the said ——, [*one of the persons, parties of the second part*], have ceased, by the deaths of the annuitants to whom the same respectively were given, and all arrears thereof have been

Recital of the testator's will and death, and the probate of his will;

—of the funeral and testamentary expenses, debts, and legacies, having been paid;

(*a*) See supra, p. 272, n. (*d*).

paid. AND WHEREAS the sum of £——, £— per cent. —— Bank Annuities was invested and appropriated as a fund to secure the said annuity of £—— to the said ——. [*Recitals explanatory of the interests of the other persons, parties of the second part*]. AND WHEREAS the said E. F. [*the deceased trustee*], died on the —— day of ——. AND WHEREAS the funds now remaining vested in the said G. H., as surviving trustee under the said will, consist of £—— £— per cent. —— Bank Annuities, (that is to say), the said sum of £——, £— per cent. —— Bank Annuities, in which the said ——, [*a person, party of the second part*], is immediately interested; the like sum of £—— like annuities, in which the said ——, [*another person, party of the second part*], is immediately interested; and the said sum of £——, £— per cent. —— Bank Annuities, appropriated to secure the said annuity of £—— to the said ——. AND WHEREAS the said G. H. is desirous (with the consent and approbation of the said several persons parties hereto of the second part, to be testified as hereinafter mentioned) (*a*), of appointing the said I. K. to be a trustee of the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities, in the stead or place of the said E. F., for the purposes of the said will, according to the powers and provisions therein contained (*b*). AND WHEREAS it is intended that the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities shall be forthwith transferred into the names of the said G. H. and I. K. (*c*): NOW THIS

OF SUMS OF STOCK APPROPRIATED.

—of the appropriation of a sum of stock to answer an annuity;

—of the death of a trustee;

—of the funds now vested in the surviving trustee on the trusts of the will;

—of the desire to appoint the new trustee;

—of the intention to transfer the stock.

Witnesseth

(*a*) If the power of appointing new trustees be applicable, and capable of being exercised, and the instrument creating the trust do not require the consent of the persons beneficially interested, it is not very usual to make them parties. It is, however, often advantageous to obtain their consent, in order to preclude them from afterwards objecting to the propriety of the appointment, and to shew, in case of dispute with persons taking subsequent interests, that the persons for the time being beneficially interested concurred in the appointment. If (which rarely happens) all the cestui que trusts are competent to assent, they should certainly be made parties, and assent to the appointment of the new trustees.

Concurrence in the appointment of new trustees of the persons beneficially interested.

(*b*) See supra, p. 263, n. (*b*).

(*c*) This recital is inserted as an indication of the intention to comply

OF SUMS OF STOCK APPROPRIATED.

appointment of the new trustee.

INDENTURE WITNESSETH, that for effectuating the said desire, and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to the said G. H. for this purpose given by the said will, as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling him in this behalf, he, the said G. H., with the consent of the said several persons, parties hereto of the second part, (testified by their respectively being parties to and executing these presents), doth by this present writing, &c., nominate, substitute, and appoint the said I. K. to be a trustee in the stead or place of the said E. F. for the purposes mentioned in the said will, so far as relates to the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities (*d*).

Witnesseth further, declaration of trust of the sums of stock.

AND THIS INDENTURE ALSO WITNESSETH, that it is hereby agreed and declared between and by the parties to these presents, that the said G. H. and I. K., their executors, administrators, and assigns, shall stand and be possessed of, and interested in the said sums of £——, £— per cent. Bank Annuities, £—— like annuities, and £—— like annuities, when and so soon as the same shall have been transferred into the names of the said G. H. and I. K. as aforesaid, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities, would now, under and by virtue of the said will, stand and be subject or liable respectively in case this present indenture had not been made and executed, and the said I. K. had been originally made a trustee of and in the said will, instead of the said E. F., and the name of the said I. K. had accordingly been in the said will inserted throughout, instead of the name of the said E. F. IN WITNESS &c.

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with the direction to vest the trust funds in the new trustees, and to lay a ground for the declaration of trust subsequently made.

(*d*) See supra, p. 263, n. (*c*).

XXVII.

OF A DEED OF EVEN DATE WITH A SETTLEMENT.

**APPOINTMENT (*by Indorsement*) *under a Power in a* DEED *of* EVEN DATE *with a* SETTLEMENT *of* FREEHOLDS *and* LEASEHOLDS *directed to be* SOLD *where part of the Property had been sold* (*a*).

THIS INDENTURE, made &c., BETWEEN the within-named A. B., and C. B., his wife (formerly the within-named C. D., spinster), [*the appointors*] of the first part, the within-named E. F., G. H., and I. K., [*old trustees*] of the second part, L. M. of &c., [*new trustee*] of the third part, and N. O. of &c. [*provisional trustee*] of the fourth part: WHEREAS the marriage in the within-written indenture mentioned to be intended to be had and solemnized between the said A. B. and C. B., then C. D., was had and solemnized shortly after the date and execution of the within-written indenture (*b*): AND WHEREAS the hereditaments comprised in the within-recited indentures of the —— day of ——, and the —— day of —— respectively, have, in pursuance of the trusts of the within-written indenture, been sold and assigned to the respective purchasers thereof (*c*): AND WHEREAS the said G. H. has refused and declined to act any further in the trusts reposed in him by the within-written indenture: AND WHEREAS the said

Parties.

Recital of the marriage having been solemnized;

—of the sale of parts of the trust property;

—of one trustee having declined to act;

—of the desire to appoint the new trustee.

(*a*) When property has been vested in trustees, upon trust for sale, with a declaration of trust of the purchase-money, by reference to a deed of settlement, and part of the property has been sold, new trustees of the money received from the sale should be appointed under the power in the settlement, and not under the power in the trust deed. The power in the trust deed properly applies only to such of the property as remains unsold. Hence, in appointing new trustees of the trust deed, it is sufficient to recite, that part of the property has been sold, without taking notice of the application of the purchase-money. See this and the subsequent precedent.

Appointment of trustees of deeds which declare trusts by a reference to settlements.

(*b*) See the note, *supra*, p. 261.

(*c*) See *supra*, n. (*a*).

OF A DEED OF EVEN DATE WITH A SETTLEMENT.

A. B. and C. B. are desirous of appointing the said L. M. to be a trustee of the within-written indenture in the room of the said G. H.: NOW THIS INDENTURE WITNESSETH that &c., [*appointment of L. M. to be the new trustee in the place of G. H., supra, p. 270*]: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf contained in the within-written indenture, and in consideration of the premises, They, the said E. F., G. H., and I. K., do, and each of them doth, by these presents (made in pursuance of an act, &c., *supra, p. 266*), release unto the said L. M. and his heirs, ALL SUCH and so many such part and parts of the pieces or parcels of ground, messuages, and hereditaments, by the within-written indenture granted and released, or expressed and intended so to be, as remain unsold, with the rights, easements, and appurtenances, AND ALL THE ESTATE &c., TO HAVE AND TO HOLD all and singular the said hereditaments and premises hereby released, or expressed and intended so to be, unto the said L. M. and his heirs, TO THE USE of the said E. F., L. M., and I. K., their heirs and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, for, with, under, and subject to which the said hereditaments and premises hereinbefore released or expressed, and intended so to be, would now, under or by virtue of the within-written indenture stand and be subject, in case this present indenture had not been made and executed, and the said L. M. had been originally made a party to the within-written indenture, and the lease for a year whereon the same was grounded, instead of the said G. H.; and the name of the said L. M. had accordingly been in the within-written indenture, and the lease for a year whereon the same was grounded, inserted throughout instead of the name of the said G. H, and the said L. M. had executed the within-written indenture, instead of the said G. H (*d*). [*Covenant by E. F., G. H., and I. K.,*

Witnesseth appointment of the new trustee.

Witnesseth further, conveyance by the old trustees to the new trustee.

Parcels.

Habendum to the use of the continuing and new trustees.

(*d*) See supra, p. 272, n. (*d*).

OF A DEED OF EVEN DATE WITH A SETTLEMENT.

severally, with L. M. against incumbrances, supra, p. 283]. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said direction in this behalf contained in the within-written indenture, and in consideration of the premises, they, the said E. F., G. H., and I. K., do, and each of them doth by these presents assign unto the said N. O., his executors, administrators, and assigns, ALL SUCH and so many and such part and parts of the piece or parcel of ground, messuage or tenement, hereditaments and premises by the within-mentioned indenture of the —— day of —— demised or expressed, and intended so to be, as by the within-written indenture were assigned to the said E. F., G. H., and I. K., their executors, administrators, and assigns, as therein mentioned: AND ALL THE ESTATE, &c., TO HAVE AND TO HOLD all and singular the said hereditaments and premises hereby assigned, or expressed and intended so to be, unto the said N. O., his executors, administrators, and assigns, for all the residue now to come therein of the within-mentioned term of —— years, granted by the said indenture of the —— day of ——, UPON TRUST and to the intent that the said N. O. may forthwith assign the same premises unto the said E. F., L. M., and I. K., their executors, administrators, and assigns, for all the residue now to come of the said last-mentioned term, Upon and for the trusts, intents, and purposes, &c. [*supra, p.* 286]. [*Covenant by E. F., G. H., and I. K., severally, with N. O. against incumbrances, supra, pp.* 286, 287]. IN WITNESS &c. (*e*).

Witnesseth further, assignment of leaseholds to a provisional trustee.

Parcels.

Habendum.

In trust to reassign to the continuing and new trustees.

(*e*) For a precedent of the re-assignment of the leaseholds, see the last precedent, supra, p. 287.

OF A WILL OF FREEHOLD, COPYHOLD, AND PERSONAL ESTATE.

sonal estate, and premises hereinbefore assigned, or expressed, and intended so to be, or any of them, or any part thereof, are, is, can, shall, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever. IN WITNESS &c.

XXIII.

REASSIGNMENT.

REASSIGNMENT *by* INDORSEMENT *on the last Deed from the* PROVISIONAL *Trustee to the continuing and new Trustees.*

Parties.

THIS INDENTURE, made &c., BETWEEN the within-named N. O., [*provisional trustee*], of the one part; and the within-named C. D., G. H., and I. K., [*the continuing and new trustees*], of the other part; WITNESSETH, that,

Witnesseth reassignment to the three trustees of all the property bequeathed by the will to three trustees.

in pursuance of the trust in this behalf reposed in the said N. O., by the within-written indenture, he the said N. O., doth, by these presents, assign unto the said C. D., G. H., and I. K., their executors, administrators, and assigns, ALL and singular the leasehold lands and hereditaments, with the appurtenances; And all the plate, household furniture, books, pictures, prints, statues, and marbles, and all and singular other the personal estate and effects whatsoever, by the within-written indenture assigned to the said N. O., his executors, administrators, and assigns, (except the hereditaments by the within-recited will bequeathed to the said E. F. and G. H., their executors, administrators, and assigns, as in the within-written indenture is mentioned;) AND ALSO by way of assignment, and not of exception, ALL THE ESTATE, &c., TO HAVE AND TO HOLD all and singular the said leasehold hereditaments, chattels, and premises hereinbefore assigned or expressed, and intended so to be, unto the said C. D., G. H., and I. K., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with,

Habendum upon the trusts of the will.

REASSIGNMENT.

under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which the same would now under and by virtue of the said within-recited will stand and be subject respectively, in case the within-written indenture and these presents had not been made and executed, and the said I. K. had been originally made a trustee in and under the said will, instead of the said E. F., and the name of the said I. K. had accordingly been inserted in the said will throughout, instead of the name of the said E. F. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the trust in this behalf reposed in the said N. O., by the within-written indenture, he the said N. O. doth, by these presents, assign unto the said G. H. and I. K., their executors, administrators, and assigns, ALL the hereditaments vested in the within-named testator, for any term or terms of years, upon any trusts, or by way of mortgage, and by the said within-recited will bequeathed to the said G. H. and E. F., their executors, administrators, and assigns, with their appurtenances, AND ALL THE ESTATE &c., TO HAVE AND TO HOLD all and singular the said premises lastly hereinbefore assigned or expressed, and intended so to be, unto the said G. H. and I. K., their executors, administrators, and assigns, upon, with, under, and subject to the trusts and equities of redemption, now subsisting in the said last-mentioned premises respectively. IN WITNESS &c.

Witnesseth further, assignment to two trustees of the trust and mortgage estates by the will bequeathed to two trustees.

Habendum according to the will.

XXIV.

OF A TERM OF YEARS.

APPOINTMENT (*by Indorsement*) *of a new Trustee of a* TERM *of* YEARS *limited by a* SETTLEMENT.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named A. B. and C. B., his wife, [*the appointors*], of the first part; the within-named E. F.

OF A TERM OF YEARS.

Recitals.

and G. H., [*the old trustees*], of the second part; I. K., of &c., [*the new trustee*], of the third part; and N. O., of &c., [*provisional trustee*], of the fourth part; WHEREAS &c., [*recital of the desire of G. H. to be discharged from the trusts, and of the desire of A. B. and C. B. to appoint I. K. to be the new trustee, supra, p. 270*] (*a*).

Witnesseth appointment of the new trustee.

NOW THIS INDENTURE WITNESSETH, that &c., [*appointment of I. K. to be a trustee in the place of G. H., supra, p. 270*].

Witnesseth further, assignment by the old trustees to a provisional trustee.

AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf in the within-written indenture contained, they the said E. F. and G. H., at the request and by the direction of the said A. B. and C. B., his wife, and also of the said I. K., (testified by their severally being parties to and executing these presents), do, and each of them doth by these presents assign unto the said N. O., his executors and administrators,

Parcels.

ALL AND SINGULAR the messuages, lands, tenements, and hereditaments, by the within-written indenture limited to the use of the said E. F. and G. H., their executors, administrators, and assigns, for the within-mentioned term of —— years, with their rights, easements, and appurtenances;

Habendum for the term.

AND ALL THE ESTATE, &c., TO HAVE AND TO HOLD all and singular the said messuages, lands, tenements, hereditaments, and premises hereinbefore assigned or expressed, and intended so to be, unto the said N. O., his executors and administrators, for the residue now to come of the within-mentioned term of —— years,

In trust to reassign to the continuing and new trustees.

UPON TRUST and to the intent that the said N. O., his executors or administrators may forthwith assign the same unto the said E. F. and I. K., their executors, administrators, and assigns, for the residue now to come of the said term of —— years, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, for, with, under, and subject to which the said premises would now under and by virtue of the within-

(*a*) The settlement referred to was post nuptial, so that a recital of the solemnization of the marriage is not required in this deed. See the note, supra, p. 261, and the form of the recital, infra, p. 291.

written indenture stand and be subject, in case this present indenture had not been made and executed, and the said I. K. had been originally made a party to and trustee of the within-written indenture instead of the said G. H., and the name of the said I. K. had accordingly been in the said indenture inserted throughout, instead of the name of the said G. H. (*b*). [*Covenant by E. F. and G. H., severally, with N. O., against incumbrances, supra, p. 283.*] IN WITNESS &c.

OF A TERM OF YEARS.

Covenant.

XXV.

REASSIGNMENT (*to be also indorsed on the Settlement*) *of the Premises assigned by the last Deed.*

REASSIGNMENT.

THIS INDENTURE, made &c., BETWEEN the above-named N. O., of the one part; and the above-named E. F. and I. K., of the other part; WITNESSETH, that in pursuance of the trust in this behalf by the above-written indenture reposed in him, He the said N. O., doth by these presents assign unto the said E. F. and I. K., their executors, administrators, and assigns, ALL AND SINGULAR the messuages, lands, tenements, hereditaments, rights, easement, and appurtenances, by the above-written indenture assigned to the said N. O., his executors and administrators; AND ALL THE ESTATE &c., TO HAVE AND TO HOLD all and singular the said messuages, lands, tenements, hereditaments, and premises hereinbefore assigned or expressed, and intended so to be, unto the said E. F. and I. K., their executors, administrators, and assigns, for the residue now to come of the above and within-mentioned term of —— years; UPON AND FOR the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, for, with, under, and

Parties.

Witnesseth reassignment by the provisional to the continuing and new trustees.

Habendum upon the trusts of the settlement.

(*b*) See supra, p. 272, n. (*d*).

REASSIGNMENT.

subject to which the said premises would now under and by virtue of the within-written indenture stand and be subject, in case this present indenture and the above-written indenture had not been made and executed, and the said I. K. had been originally made a party to and trustee of the within-written indenture, instead of the within-named G. H., and the name of the said I. K. had accordingly been in the said indenture inserted throughout, instead of the name of the said G. H. (*a*). IN WITNESS &c.

XXVI.

OF SUMS OF STOCK APPROPRIATED.

APPOINTMENT *of a new Trustee of a* WILL, *in the place of a* DECEASED *Trustee, where the Testator's Estate had been fully administered, and* CERTAIN SUMS *of* STOCK *had been* APPROPRIATED, *and remained to answer* SPECIFIC TRUSTS.

Parties.

THIS INDENTURE, made &c., BETWEEN G. H., of &c., [*surviving trustee*], of the first part; ——, [*parties beneficially interested*], of the second part; and I. K., of &c., [*new trustee*], of the third part. [*Recital of the will of the testator, particularly of the special trusts remaining to be performed, so far as to shew the interests of the persons, parties of the second part. Recital of the death of the testator, and of the probate, supra, p.* 279]. AND WHEREAS the funeral and testamentary expenses and debts of the said testator, and the legacies given by his said will, were long since paid or satisfied, and all the annuities given by his said will, except the said annuity of £—— to the said ——, [*one of the persons, parties of the second part*], have ceased, by the deaths of the annuitants to whom the same respectively were given, and all arrears thereof have been

Recital of the testator's will and death, and the probate of his will;

—of the funeral and testamentary expenses, debts, and legacies, having been paid;

(*a*) See supra, p. 272, n. (*d*).

paid. AND WHEREAS the sum of £——, £— per cent. —— Bank Annuities was invested and appropriated as a fund to secure the said annuity of £—— to the said ——. [*Recitals explanatory of the interests of the other persons, parties of the second part*]. AND WHEREAS the said E. F. [*the deceased trustee*], died on the —— day of ——. AND WHEREAS the funds now remaining vested in the said G. H., as surviving trustee under the said will, consist of £—— £— per cent. —— Bank Annuities, (that is to say), the said sum of £——, £— per cent. —— Bank Annuities, in which the said ——, [*a person, party of the second part*], is immediately interested; the like sum of £—— like annuities, in which the said ——, [*another person, party of the second part*], is immediately interested; and the said sum of £——, £— per cent. —— Bank Annuities, appropriated to secure the said annuity of £—— to the said ——. AND WHEREAS the said G. H. is desirous (with the consent and approbation of the said several persons parties hereto of the second part, to be testified as hereinafter mentioned) (*a*), of appointing the said I. K. to be a trustee of the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities, in the stead or place of the said E. F., for the purposes of the said will, according to the powers and provisions therein contained (*b*). AND WHEREAS it is intended that the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities shall be forthwith transferred into the names of the said G. H. and I. K. (*c*): NOW THIS Witnesseth

OF SUMS OF STOCK APPROPRIATED.

—of the appropriation of a sum of stock to answer an annuity;

—of the death of a trustee;

—of the funds now vested in the surviving trustee on the trusts of the will;

—of the desire to appoint the new trustee;

—of the intention to transfer the stock.

(*a*) If the power of appointing new trustees be applicable, and capable of being exercised, and the instrument creating the trust do not require the consent of the persons beneficially interested, it is not very usual to make them parties. It is, however, often advantageous to obtain their consent, in order to preclude them from afterwards objecting to the propriety of the appointment, and to shew, in case of dispute with persons taking subsequent interests, that the persons for the time being beneficially interested concurred in the appointment. If (which rarely happens) all the cestui que trusts are competent to assent, they should certainly be made parties, and assent to the appointment of the new trustees.

Concurrence in the appointment of new trustees of the persons beneficially interested.

(*b*) See supra, p. 263, n. (*b*).

(*c*) This recital is inserted as an indication of the intention to comply

OF SUMS OF STOCK APPROPRIATED.

appointment of the new trustee.

INDENTURE WITNESSETH, that for effectuating the said desire, and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to the said G. H. for this purpose given by the said will, as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling him in this behalf, he, the said G. H., with the consent of the said several persons, parties hereto of the second part, (testified by their respectively being parties to and executing these presents), doth by this present writing, &c., nominate, substitute, and appoint the said I. K. to be a trustee in the stead or place of the said E. F. for the purposes mentioned in the said will, so far as relates to the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities (*d*).

Witnesseth further, declaration of trust of the sums of stock.

AND THIS INDENTURE ALSO WITNESSETH, that it is hereby agreed and declared between and by the parties to these presents, that the said G. H. and I. K., their executors, administrators, and assigns, shall stand and be possessed of, and interested in the said sums of £——, £— per cent. Bank Annuities, £—— like annuities, and £—— like annuities, when and so soon as the same shall have been transferred into the names of the said G. H. and I. K. as aforesaid, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities, would now, under and by virtue of the said will, stand and be subject or liable respectively in case this present indenture had not been made and executed, and the said I. K. had been originally made a trustee of and in the said will, instead of the said E. F., and the name of the said I. K. had accordingly been in the said will inserted throughout, instead of the name of the said E. F. IN WITNESS &c.

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with the direction to vest the trust funds in the new trustees, and to lay a ground for the declaration of trust subsequently made.

(*d*) See supra, p. 263, n. (*c*).

XXVII.

OF A DEED OF EVEN DATE WITH A SETTLEMENT.

APPOINTMENT (*by Indorsement*) *under a Power in a* DEED *of* EVEN DATE *with a* SETTLEMENT *of* FREEHOLDS *and* LEASEHOLDS *directed to be* SOLD *where part of the Property had been sold* (*a*).

THIS INDENTURE, made &c., BETWEEN the within-named A. B., and C. B., his wife (formerly the within-named C. D., spinster), [*the appointors*] of the first part, the within-named E. F., G. H., and I. K., [*old trustees*] of the second part, L. M. of &c., [*new trustee*] of the third part, and N. O. of &c. [*provisional trustee*] of the fourth part: WHEREAS the marriage in the within-written indenture mentioned to be intended to be had and solemnized between the said A. B. and C. B., then C. D., was had and solemnized shortly after the date and execution of the within-written indenture (*b*): AND WHEREAS the hereditaments comprised in the within-recited indentures of the —— day of ——, and the —— day of —— respectively, have, in pursuance of the trusts of the within-written indenture, been sold and assigned to the respective purchasers thereof (*c*): AND WHEREAS the said G. H. has refused and declined to act any further in the trusts reposed in him by the within-written indenture: AND WHEREAS the said

Parties.

Recital of the marriage having been solemnized;

—of the sale of parts of the trust property;

—of one trustee having declined to act;

—of the desire to appoint the new trustee.

(*a*) When property has been vested in trustees, upon trust for sale, with a declaration of trust of the purchase-money, by reference to a deed of settlement, and part of the property has been sold, new trustees of the money received from the sale should be appointed under the power in the settlement, and not under the power in the trust deed. The power in the trust deed properly applies only to such of the property as remains unsold. Hence, in appointing new trustees of the trust deed, it is sufficient to recite, that part of the property has been sold, without taking notice of the application of the purchase-money. See this and the subsequent precedent.

Appointment of trustees of deeds which declare trusts by a reference to settlements.

(*b*) See the note, supra, p. 261.

(*c*) See supra, n. (*a*).

OF SUMS OF STOCK APPROPRIATED.

appointment of the new trustee.

INDENTURE WITNESSETH, that for effectuating the said desire, and pursuant to, and by force and virtue, and in exercise and execution of the power or authority to the said G. H. for this purpose given by the said will, as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling him in this behalf, he, the said G. H., with the consent of the said several persons, parties hereto of the second part, (testified by their respectively being parties to and executing these presents), doth by this present writing, &c., nominate, substitute, and appoint the said I. K. to be a trustee in the stead or place of the said E. F. for the purposes mentioned in the said will, so far as relates to the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities (*d*). AND

Witnesseth further, declaration of trust of the sums of stock.

THIS INDENTURE ALSO WITNESSETH, that it is hereby agreed and declared between and by the parties to these presents, that the said G. H. and I. K., their executors, administrators, and assigns, shall stand and be possessed of, and interested in the said sums of £——, £— per cent. Bank Annuities, £—— like annuities, and £—— like annuities, when and so soon as the same shall have been transferred into the names of the said G. H. and I. K. as aforesaid, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject to which the said sums of £——, £— per cent. —— Bank Annuities, £—— like annuities, and £—— like annuities, would now, under and by virtue of the said will, stand and be subject or liable respectively in case this present indenture had not been made and executed, and the said I. K. had been originally made a trustee of and in the said will, instead of the said E. F., and the name of the said I. K. had accordingly been in the said will inserted throughout, instead of the name of the said E. F. IN WITNESS &c.

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with the direction to vest the trust funds in the new trustees, and to lay a ground for the declaration of trust subsequently made.

(*d*) See supra, p. 263, n. (*c*).

XXVII.

OF A DEED OF EVEN DATE WITH A SETTLEMENT.

APPOINTMENT (*by Indorsement*) *under a Power in a* DEED *of* EVEN DATE *with a* SETTLEMENT *of* FREEHOLDS *and* LEASEHOLDS *directed to be* SOLD *where part of the Property had been sold* (*a*).

THIS INDENTURE, made &c., BETWEEN the within-named A. B., and C. B., his wife (formerly the within-named C. D., spinster), [*the appointors*] of the first part, the within-named E. F., G. H., and I. K., [*old trustees*] of the second part, L. M. of &c., [*new trustee*] of the third part, and N. O. of &c. [*provisional trustee*] of the fourth part: WHEREAS the marriage in the within-written indenture mentioned to be intended to be had and solemnized between the said A. B. and C. B., then C. D., was had and solemnized shortly after the date and execution of the within-written indenture (*b*): AND WHEREAS the hereditaments comprised in the within-recited indentures of the —— day of ——, and the —— day of —— respectively, have, in pursuance of the trusts of the within-written indenture, been sold and assigned to the respective purchasers thereof (*c*): AND WHEREAS the said G. H. has refused and declined to act any further in the trusts reposed in him by the within-written indenture: AND WHEREAS the said

Parties.

Recital of the marriage having been solemnized;

—of the sale of parts of the trust property;

—of one trustee having declined to act;

—of the desire to appoint the new trustee.

(*a*) When property has been vested in trustees, upon trust for sale, with a declaration of trust of the purchase-money, by reference to a deed of settlement, and part of the property has been sold, new trustees of the money received from the sale should be appointed under the power in the settlement, and not under the power in the trust deed. The power in the trust deed properly applies only to such of the property as remains unsold. Hence, in appointing new trustees of the trust deed, it is sufficient to recite, that part of the property has been sold, without taking notice of the application of the purchase-money. See this and the subsequent precedent.

Appointment of trustees of deeds which declare trusts by a reference to settlements.

(*b*) See the note, supra, p. 261.

(*c*) See supra, n. (*a*).

OF A DEED OF EVEN DATE WITH A SETTLEMENT.

A. B. and C. B. are desirous of appointing the said L. M. to be a trustee of the within-written indenture in the room of the said G. H.: NOW THIS INDENTURE WITNESSETH that &c., [*appointment of L. M. to be the new trustee in the place of G. H., supra, p. 270*]: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf contained in the within-written indenture, and in consideration of the premises, They, the said E. F., G. H., and I. K., do, and each of them doth, by these presents (made in pursuance of an act, &c., *supra, p. 266*), release unto the said L. M. and his heirs, ALL SUCH and so many such part and parts of the pieces or parcels of ground, messuages, and hereditaments, by the within-written indenture granted and released, or expressed and intended so to be, as remain unsold, with the rights, easements, and appurtenances, AND ALL THE ESTATE &c., TO HAVE AND TO HOLD all and singular the said hereditaments and premises hereby released, or expressed and intended so to be, unto the said L. M. and his heirs, TO THE USE of the said E. F., L. M., and I. K., their heirs and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, for, with, under, and subject to which the said hereditaments and premises hereinbefore released or expressed, and intended so to be, would now, under or by virtue of the within-written indenture stand and be subject, in case this present indenture had not been made and executed, and the said L. M. had been originally made a party to the within-written indenture, and the lease for a year whereon the same was grounded, instead of the said G. H.; and the name of the said L. M. had accordingly been in the within-written indenture, and the lease for a year whereon the same was grounded, inserted throughout instead of the name of the said G. H, and the said L. M. had executed the within-written indenture, instead of the said G. H (*d*). [*Covenant by E. F., G. H., and I. K.,*

Witnesseth appointment of the new trustee.

Witnesseth further, conveyance by the old trustees to the new trustee.

Parcels.

Habendum to the use of the continuing and new trustees.

(*d*) See supra, p. 272, n. (*d*).

severally, with L. M. against incumbrances, supra, p. 283]. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said direction in this behalf contained in the within-written indenture, and in consideration of the premises, they, the said E. F., G. H., and I. K., do, and each of them doth by these presents assign unto the said N. O., his executors, administrators, and assigns, ALL SUCH and so many and such part and parts of the piece or parcel of ground, messuage or tenement, hereditaments and premises by the within-mentioned indenture of the —— day of —— demised or expressed, and intended so to be, as by the within-written indenture were assigned to the said E. F., G. H., and I. K., their executors, administrators, and assigns, as therein mentioned: AND ALL THE ESTATE, &c., TO HAVE AND TO HOLD all and singular the said hereditaments and premises hereby assigned, or expressed and intended so to be, unto the said N. O., his executors, administrators, and assigns, for all the residue now to come therein of the within-mentioned term of —— years, granted by the said indenture of the —— day of ——, UPON TRUST and to the intent that the said N. O. may forthwith assign the same premises unto the said E. F., L. M., and I. K., their executors, administrators, and assigns, for all the residue now to come of the said last-mentioned term, Upon and for the trusts, intents, and purposes, &c. [*supra, p.* 286]. [*Covenant by E. F., G. H., and I. K., severally, with N. O. against incumbrances, supra, pp.* 286, 287]. IN WITNESS &c. (*e*).

OF A DEED OF EVEN DATE WITH A SETTLEMENT.

Witnesseth further, assignment of leaseholds to a provisional trustee.

Parcels.

Habendum.

In trust to reassign to the continuing and new trustees.

(*e*) For a precedent of the re-assignment of the leaseholds, see the last precedent, supra, p. 287.

XXVIII.

OF MONIES IN THE HANDS OF THE TRUSTEES OF A SETTLEMENT.

APPOINTMENT (*by Indorsement on a* SETTLEMENT) *of a new Trustee of* MONEY IN HAND, *produced by the Sale of Lands comprised in Trust-Deeds referring to the Settlement.*

Parties.

THIS INDENTURE, made &c., BETWEEN the within-named A. B., and C. B., his wife (formerly the within-named C. D., spinster), [*appointors*] of the first part; the within-named E. F., G. H., and I. K., [*old trustees*] of the second part; and L. M. of &c. [*new trustee*] of the third part: WHEREAS &c., [*recital of the marriage, supra, p.* 291]: AND WHEREAS some of the leasehold estates in the within-written indenture mentioned, or referred to, have been recently sold and assigned to the respective purchasers thereof, and the monies arising from the sale thereof have been received by the said E. F., G. H., and I. K., and the expenses incident to the said sale paid thereout: AND WHEREAS the indenture of assignment of the —— day of ——, referred to in the above-written indenture of the same date, was never executed by the said G. H., nor did he ever agree to accept the trusts thereof, or act in the same trusts, and he duly executed a disclaimer thereof (*a*): AND WHEREAS the whole of the hereditaments comprised in the same indenture of the —— day of ——, (except one tenement, the lease whereof has expired), have been recently sold and assigned to the respective purchasers thereof, and the monies arising from the sale thereof have been received by the said E. F. and I. K., and the expenses incident to the said last-mentioned sale paid thereout: AND WHEREAS the net monies arising from both the sales aforesaid, after payment

—of the sale of leaseholds comprised in an indenture of even date with the settlement;

—of the retiring trustee not having accepted the trusts of an indenture indorsed on the settlement;

—of the property in the last-mentioned indenture having been sold;

—of the net amount of monies derived from both sales;

(*a*) The indenture in question settled monies to arise from the sale of other property upon the trusts of the original settlement.

of the expenses aforesaid, and now remaining in the hands of the said E. F., G. H., and I. K., and of the said E. F. and I. K., respectively, amount to the sum of £ ——: AND WHEREAS the said G. H. hath refused and declined to act any further either in the trusts reposed in him by the within-mentioned indenture of even date with the within-written indenture, or in the trusts reposed in him by the within-written indenture: AND WHEREAS the said L. M. has been duly appointed a trustee, in the room of the said G. H., of the said within-mentioned indenture of even date with the within-written indenture, in pursuance of a power in that behalf in the same within-mentioned indenture contained; and the freehold and leasehold estates comprised in the same indenture, and now remaining unsold, have been duly vested in the said E. F., L. M., and I. K., upon the trusts thereof (*b*): AND WHEREAS the said A. B., and C. B., are desirous of appointing the said L. M. to be a trustee of the within-written indenture, in the room of the said G. H. (*c*): AND WHEREAS it is intended that the said sum of £ —— shall be paid over to the said E. F., L. M., and I. K., immediately after the execution of these presents (*d*). NOW THIS INDENTURE WITNESSETH, that &c., [*appointment of L. M., to be a trustee of the settlement in the room of G. H., supra, p. 270*]: AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that the said E. F., L. M., and I. K., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sum of £ ——, when and so soon as the same shall have been paid to the said E. F., L. M., and I. K., as aforesaid, and of and in all and every the sum or sums of money which shall come to their hands by virtue of or under the trusts of the said within-mentioned indenture of even date with the within-written indenture, Upon and for the trusts, intents, and purposes, and with, under, and

OF MONIES IN THE HANDS OF THE TRUSTEES OF A SETTLEMENT.

—of a trustee declining to act;

—of a new trustee having been appointed of the deed of even date;

—of the desire to appoint a new trustee;

—of the intention to pay the money to the continuing and new trustees.

Witnesseth appointment.

Declaration of trust of the money.

(*b*) See the last precedent.
(*c*) See supra, p. 263, n. (*b*).
(*d*) See supra, p. 289, n. (*c*).

OF MONIES IN THE HANDS OF THE TRUSTEES OF A SETTLEMENT.

subject to the powers, provisoes, and declarations, upon, for, with, under, and subject to which the said sum of £ ——, and other the sum and sums of money aforesaid would under or by virtue of the within-written indenture stand, and be subject, or liable, respectively, in case this present indenture had not been made and executed, and the said L. M. had been originally made a trustee of and in the within-written indenture and the above-written indenture of the —— day of ——, instead of the said G. H., and the name of the said L. M. had accordingly been in the same indentures inserted throughout, instead of the name of the said G. H., and the said L. M. had accordingly executed the within-written indenture instead of the said G. H. (*e*). IN WITNESS &c.

XXIX.

BY GUARDIANS OF INFANTS.

APPOINTMENT *by the* GUARDIANS *of* INFANTS (*by Indorsement on a* SETTLEMENT) *of a* NEW TRUSTEE *in the place of a* RETIRING TRUSTEE, *who was himself formerly appointed* (*by Indorsement*) *in the place of an original deceased Trustee.* THE TENANTS FOR LIFE *being* DEAD, *the* ADULT CHILDREN *had received their* ORIGINAL SHARES *of the Trust Funds.*

Parties.

THIS INDENTURE, made &c., BETWEEN U. V., of &c. X. Y., of &c., and Y. Z., of &c., [*guardians of the infant children*], of the first part; A. B., of &c., C. D., of &c., and E. F., of &c., [*the adult children*], (*a*) of the second

(*e*) The expression as to execution will of course be omitted, if the original trustee did not execute the settlement.

(*a*) The adult children are made parties on account of their contingent interests by survivorship; see supra, p. 289, n. (*a*).

BY GUARDIANS OF INFANTS.

part; the above-named T. U., [*the retiring trustee*], of the third part; and the within-named R. S., [*the continuing trustee*], and P. Q., of &c., [*the new trustee*], of the fourth part: WHEREAS there was issue of the marriage of the within-named ——, and ——, seven children and no more, viz., the said A. B., C. D., and E. F., and also G. H., I. K., L. M., and N. O., (*b*): AND WHEREAS the joint power of appointment by the within-written indenture given to the within-named [*father and mother*] was never exercised: AND WHEREAS the within-named [*father*] died in the month of ——: AND WHEREAS the sum of £——, £— per cent. —— Bank Annuities, in the above-written indenture, of the —— day of ——, mentioned to have been transferred into the names of the said R. S. and T. U., was some time since converted by act of parliament into the sum of £——, £— per cent. —— Bank Annuities: AND WHEREAS the said within-named [*mother*] died on the —— day of ——, without having exercised the power of appointment by the within-written indenture given to the survivor of the within-named [*father and mother*]: AND WHEREAS the said A. B., C. D., and E. F., have all attained the age of twenty-one years, and the said G. H., I. K., L. M., and N. O., are all infants under the age of twenty-one years, that is to say, of or about the ages of ——, ——, ——, and —— years respectively: AND WHEREAS the said R. S. and T. U. have paid three equal seventh-parts of the dividends which accrued due subsequent to the death of the said [*mother*] deceased, on the above-named sum of £——, £— per cent. —— Bank Annuities, and on the said sum of £——, £— per cent. —— Bank Annuities, in equal shares among the said A. B., C. D., and E. F., and have applied the other four equal seventh-parts of the said dividends in equal shares for the maintenance and education of the said G. H., I. K., L. M., and N. O.: AND WHEREAS the

Recital of the names and number of children of the marriage;

—of a power of appointment in the settlement not having been exercised;

—of the death of the father;

—of the conversion by act of parliament of part of the settled funds;

—of the death of the mother;

—of the ages of the children;

—of the due application of the dividends since the death of the mother;

—of the transfer of the share of one of the

(*b*) The solemnization of the marriage had been recited in the former indorsed appointment of new trustees; see the note, supra, p. 261, and the form of recital, supra, p. 291.

BY GUARDIANS OF INFANTS.

adult children to the trustees of a settlement made by him;

said R. S. and T. U., by the direction of the said A. B., have lately transferred the sum of £——, £— per cent. —— Bank Annuities, being one equal seventh-part of the said sum of £——, like annuities, and the sum of £——, £— per cent. —— Bank Annuities, being one equal seventh-part of the said sum of £——, like annuities, into the names of ——, upon the trusts of an indenture, bearing date the —— day of ——, and made, or expressed to be made between [*parties*]: AND WHEREAS the said R. S. and T. U. have also lately transferred into the names of each of them the said E. D. and C. F., the sum of £——, £— per cent. —— Bank Annuities, and £——, £— per cent. —— Bank Annuities, being two other equal seventh-parts of the said sums of £——, £— per cent. —— Bank Annuities, and £——, £— per cent. Bank Annuities, respectively: AND WHEREAS the said R. S. and T. U. have retained in their own names, the sums of £——, £— per cent. —— Bank Annuities, and £——, £— per cent. —— Bank Annuities, being the remaining four equal seventh-parts of the said sums of £——, £— per cent. —— Bank Annuities, and £——, £— per cent. —— Bank Annuities, in order to answer the expectant shares of the said G. H., I. K., L. M., and N. O., in the said last-mentioned sums: AND WHEREAS the said G. H., I. K., L. M. and N. O., by a deed-poll under their hands and seals, dated the —— day of——, have respectively elected, nominated, and appointed the said U. V., X. Y. and Y. Z., and the survivors and survivor of them, guardians and guardian of them the said G. H., I. K., L. M., and N. O. respectively, and of their respective estates, both real and personal, during their respective minorities (*c*): AND WHEREAS the said T. U. is desirous to be discharged of and from the trusts reposed in him by the said indenture of the —— day of ——, by reference to the within-written indenture, so far as relates to the said sums of £——, £— per cent. —— Bank Annuities, and £——, £—

—of the transfer to the two other adult children of their respective shares;

—of the retainer by the trustees of the residue of the funds to answer the expectant shares of the infant children;

—of the infant children having appointed guardians to themselves;

—of the desire of one of the trustees to be discharged, and of the desire of the guardians to appoint a new trustee in his place;

(*c*) See the precedent of an appointment by infants of their own guardians, infra.

per cent. —— Bank Annuities, and the said U. V., X. Y., and Y. Z. are desirous, with the privity and consent of the several persons, parties hereto, of the second part, to appoint the said P. Q. to be a trustee of the said sums of £——, £— per cent. —— Bank Annuities, and £——, £— per cent. —— Bank Annuities, in the place and stead of the said T. U., for the purposes of the within-written indenture, according to the powers and provisions therein contained (*d*): AND WHEREAS it is intended that the said R. S. and T. U., in pursuance of the direction in that behalf in the within-written indenture contained shall, immediately after the execution of these presents, transfer into the names of the said R. S. and P. Q., the said sums of £——, £— per cent. —— Bank Annuities, and £——, £— per cent. —— Bank Annuities, so retained by the said R. S. and T. U. as aforesaid (*e*): NOW THIS INDENTURE WITNESSETH, that, for effectuating the said desire, and pursuant to and by force and virtue, and in exercise and execution of, the power or authority to the said U. V., X. Y., and Y. Z., as such guardians as aforesaid for this purpose given by the within-written indenture, and of every or any other power or authority in anywise enabling them in this behalf, they the said U. V., X. Y., and Y. Z., with the privity and consent of the several persons, parties to these presents, of the second part, (testified by their being parties to and sealing and delivering these presents), do, and each of them doth, by this present writing, sealed and delivered by them respectively, nominate and appoint the said P. Q. to be a trustee for the purposes in the said within-written indenture mentioned, so far as relates to the said sums of £——, £— per cent. —— Bank Annuities, and £——, £— per cent. —— Bank Annuities, in the place and stead of the said T. U. (*f*): AND THIS INDENTURE ALSO

BY GUARDIANS OF INFANTS.

—of the intention that the trust funds shall be forthwith transferred to the continuing and new trustee.

Witnesseth appointment of the new trustee.

Witnesseth further, declaration

(*d*) See supra, p. 263, n. (*b*).
(*e*) See supra, p. 289, n. (*c*).
(*f*) See supra, p. 263, n. (*c*).

BY GUARDIANS OF INFANTS.

of trust of the remaining funds.

WITNESSETH, that it is hereby also agreed and declared between and by the parties to these presents, that the said R. S. and P. Q., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sums of £——, £— per cent. —— Bank Annuities, and £——, £— per cent. —— Bank Annuities, and the dividends and annual produce thereof respectively, UPON AND FOR the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, upon, for, with, under, and subject to which the same sums, dividends, and annual produce, would now, under or by virtue of the within-written indenture, stand and be subject or liable respectively, in case these presents, and the several other deeds, indorsed on the within-written indenture had not been made, and the said R. S. and P. Q. respectively, had been originally made trustees, in and under the within-written indenture, instead of the within-named —— and —— respectively, and the names of the said R. S. and P. Q. respectively, had accordingly been inserted in the within-written indenture throughout, instead of the names of the said —— and —— respectively. IN WITNESS &c.

DISENTAILING DEEDS.

General observations.

THE following Precedents are Precedents of assurances under the act (3 & 4 Will. 4, c. 74), "For the Abolition of Fines and Recoveries and for the substitution of more simple Modes of Assurance." Some observations on the act will be found, ante, Vol. 1, Art. DISENTAILING DEEDS; but as very few decisions have hitherto been made upon it, the principal business of the draftsman is to study the act itself with attention. Some questions have already arisen, and others will doubtless arise, on the construction of so long and important a statute; but there can be no hesitation in affirming, that it is beyond all comparison the most perfect and admirable piece of legislation in respect of the laws of property which has ever been placed upon our statute book.

Enrolment.

It must be remembered that every assurance by which any disposition of lands (except copyholds), is effected under the act by a tenant in tail, (except leases not exceeding twenty-one years at rack-rent, or at not less than five-sixths of a rack-rent), must be enrolled in Chancery within six calendar months after the execution thereof, (sect. 41); and that every deed by which a disposition of copyholds is effected under the act must be entered on the court-rolls of the manor, (sect. 53). If the consent of the protector of the settlement be given by a distinct deed, the deed, (except in the case of copyholds), must be enrolled in Chancery, either at or before the time when the disentailing assurance is enrolled, (sect. 46); and in the case of copyholds must be entered on the rolls at or before the time when the disentailing surrender is made or the disentailing deed enrolled.

Disentailment of Irish estates; —conveyance of contingent estates.

An act similar to that above referred to has been passed in respect of Ireland, (4 & 5 Will. 4, c. 92), with the important addition, that, by the 22nd section all persons are empowered to dispose of contingent estates in lands by any assurance, whether deed, will, or other instrument by which they could have made such disposition, if such estates were vested estates in possession. It would be very desirable if this enactmen twere extended to English estates, for at present a contingent estate in England can only be conveyed in equity as a matter of contract. See ante, Vol. 3, pp. 178, 179.

XXX.

WITHOUT RECITALS BY TENANT IN TAIL IN POSSESSION.

DEED *by* TENANT *in* TAIL *in* POSSESSION *to bar the Entail of Freeholds, the Creation of the Entail not being recited* (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN C. B., [*tenant in tail*], of &c., the eldest son of A. B., late of the same place, Esquire, deceased, who was the eldest son of M. B., late of the same place, Esquire, deceased, of the one part; and E. F. [*releasee*], of &c., of the other part; WITNESSETH that for barring and defeating all and every, or any the estates or estate in tail male, or in tail either at law or in equity, of the said C. B., [under the last will and testament of the said M. B., or otherwise howsoever], of or in the manors, or reputed manors, messuages, farms, lands, and other hereditaments hereinafter particularly mentioned or referred to, and intended to be hereby

Witnesseth that, to bar his entail, the tenant in tail conveys to a releasee.

Recitals in disentailing deeds —when omitted.

(*a*) The recitals of the creation of the entail, and of the subsequent story, are properly omitted in a disentailing deed, when it is doubtful whether an entail was really created, or whether, if created, it is actually subsisting. The omission may likewise be made if the recitals would run to a great length and the property is small, or there is a difficulty in shewing that the prior estates have all failed, or determined, or in otherwise making out the intermediate story.

Reference to the creation of the entail—when omitted.

The precedent in the text contains a reference to the instrument by which the entail was created, but it is frequently desirable to make no reference to any instrument, but to express that the deed is for barring all estates tail subsisting in the grantor. The last course is particularly to be recommended when there is any question as to the failure or determination of the prior estates, or as to the property being actually subject to the entail or any question as to the title. The precedent in the text may readily be altered to meet this view by omitting the words in brackets.

granted and released; And all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination or in defeazance of such estates or estate in tail male, or in tail respectively, or any of them, and for limiting and assuring the same premises, To the uses upon the trusts and subject to the powers hereinafter limited, declared, and contained, He the said C. B. doth by these presents (made in pursuance of an act, &c., *see supra, p.* 266) grant, release, dispose of, and confirm unto the said E. F., and his heirs, ALL THAT &c., [*parcels described by reference to schedule*], And all and singular other the manors, or reputed manors, messuages, farms, lands, tenements, and other hereditaments in the said several parishes of ——, or elsewhere, in the county of ——, of or to which he, the said C. B., is seised or entitled at law or in equity for any estate in tail male, or in tail [*general words*]; TO HAVE AND TO HOLD the said manors, or reputed manors, messuages, or tenements, farms, lands, and hereditaments, and all and singular other the premises hereby granted and released, or expressed, and intended so to be, unto the said E. F., and his heirs, freed and discharged from all and every the estates or estate in tail male, or in tail either at law or in equity, of him the said C. B., and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination or in defeazance of such estates or estate in tail male, or in tail, or any of them; TO SUCH USES &c., [*uses and declaration to bar dower in favour of C. B., ante, Vol. 3, pp.* 214, 215.]. IN WITNESS &c.

WITHOUT RECITALS BY TENANT IN TAIL IN POSSESSION.

Parcels.

Habendum.

To uses.

XXXI.

OF FREEHOLDS AND COPYHOLDS.

DEED *by* TENANT *for* LIFE *and* TENANT IN TAIL *to* BAR *the* ENTAIL *of* FREEHOLDS *originally comprised in a Settlement, and of Freeholds subsequently acquired and settled by virtue of the Power of Sale and Exchange, the* POWERS *appendant to the Estate for Life* BEING PRESERVED—COVENANT *to surrender* COPYHOLDS *to* BAR *the legal* ENTAIL *therein.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*tenant for life*], of the first part; C. B., of &c., [*tenant in tail*], the eldest son of the said A. B., by E. B., his wife, of the second part; and E. F., of &c. [*releasee*], of the third part: WHEREAS by indentures of lease and release, bearing date respectively the —— and —— days of ——, the release being made, or expressed to be made, between [*parties*] (being the settlement made previously to and in consideration of the marriage then intended, and shortly after had and solemnized, between the said A. B. and E. B.,) the manors or lordships, capital and other messuages, farms, lands, and hereditaments therein mentioned, including part of the manors, farms, lands, and other hereditaments hereinafter particularly mentioned, and intended to be hereby granted and released, with their rights, members, easements, and appurtenances, were conveyed and assured, and by the said indenture of release limited, To the use of the said A. B., and his heirs, until the said intended marriage should be had and solemnized, and from and after the solemnization thereof, To the use of the said ——, and ——, their executors, administrators, and assigns, for the term of 99 years, to commence from the solemnization of the said marriage, without impeachment of waste upon the trusts in the said indenture of release mentioned for raising the annual sum of £——, during the joint lives of the said

Recital of the settlement creating the entail in the freeholds;

A. B. and E. B., for the separate use of the said E. B., by way of pin-money; And after the expiration or sooner determination of the said term of 99 years, and in the meantime subject thereto and to the trusts thereof, To the use of the said A. B. and his assigns for his life, without impeachment of waste, with remainder, To the use of the said ——, and ——, and their heirs, during the life of the said A. B., In trust for him and his assigns, and to preserve the contingent remainders, with remainder, To the use, intent, and purpose, that in case the said E. B. should survive the said A. B., she the said E. B., and her assigns, might receive an annual sum or yearly rent-charge of £ ——, to be issuing and payable out of and charged and chargeable upon the manors or lordships, capital and other messuages, farms, lands, and hereditaments in the said indenture of release comprised; And also to the use, intent, and purpose, that in case the said E. B. should survive the said A. B., and ——, his mother, she the said E. B., and her assigns, might receive a further annual sum or yearly rent charge of £——, to be issuing and payable as aforesaid, the said annual sums or yearly rent charges of £——, and £——, to be received by the said E. B. in bar of dower and freebench, and to be payable in such manner and to be attended with such powers and remedies for recovering and compelling payment of the same respectively, when in arrear, by distress, and entry upon, and detention of the possession and perception of the rents and profits of the said manors or lordships, capital, and other messuages, farms, lands, and other hereditaments, and with such proviso for cesser in certain events of the said annual sum of £——, as in the said indenture of release are mentioned; And subject to the said annual rent charges of £——, and £——, and to the powers and remedies for enforcing payment of the same respectively, To the use of the said ——, and ——, their executors, administrators, and assigns, for the term of 200 years, to commence from the day of the decease of the said A. B. without impeachment of waste, Upon the trusts therein mentioned, for further securing the said annual sums or yearly rent-charges of £ ——, and

OF FREEHOLDS AND COPYHOLDS.

£—— respectively; And from and after the expiration or sooner determination of the said term of 200 years, and in the mean time subject thereto, and to the trusts thereof, To the use of the said ——, and ——, their executors, administrators, and assigns, for the term of 1000 years, to commence from the day next before the day of the decease of the said A. B. upon the trusts therein mentioned, for raising the sum of £—, for the portion or portions of the child or children of the said then intended marriage, (other than an eldest or only son, who for the time being should, by virtue of or under the limitations therein contained, be entitled to the said manors, messuages, farms, lands, and other hereditaments therein comprised, in remainder immediately expectant on the decease of the said A. B., and the determination of the said term of 1000 years,) with such provisions for the maintenance and education of the same child or children as are therein mentioned; And from and after the expiration or sooner determination of the said term of 1000 years, and in the mean time subject thereto, and to the trusts thereof, To the use of the first and every other son of the body of the said A. B., on the body of the said E. B., to be begotten successively according to their respective seniorities in tail male with remainder, To the use of the said A. B., his heirs and assigns for ever (*a*). [*Recital of power for A. B. to charge the settled estate with £—*]. And by the said indenture of release the said A. B. did for himself, his heirs, executors, and administrators, covenant with the said ——, and —, their heirs and assigns, that he the said A. B., and all and every other person or persons claiming, or to claim, by, from, under, or in trust for him, should in manner and at the time in the said indenture now in recital mentioned, duly surrender, or cause to be surrendered into the hands of the lords of the respective manors whereof the same were holden, the several

—and containing a covenant to surrender the copyholds to the same uses;

Recital of settlements in disentailing deeds.

(*a*) As to the manner of reciting settlements, and the extent to which they ought to be recited, see ante, Vol. 3, p. 222; see too, Vol. 3, Preced. XXIX, p. 280, et seq. In disentailing deeds it is necessary to bring down the recitals to the limitation of the estate-tail; but no subsequent limitation is recited, unless there be only one in fee as in the text.

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copyhold or customary hereditaments therein mentioned, including the copyhold or customary hereditaments hereinafter particularly mentioned, and hereby covenanted to be surrendered with their appurtenances, To such uses, upon such trusts, and for such intents and purposes, and with, under, and subject to such powers, provisoes, and agreements as might most nearly correspond with the uses, trusts, intents, and purposes, powers, provisoes, and agreements thereinbefore limited, declared, and contained, of and concerning the freehold hereditaments thereinbefore comprised (*b*); AND WHEREAS the said copyhold hereditaments by the said indenture of release, covenanted to be surrendered as aforesaid, were duly surrendered in pursuance of the same covenant [*Recital of the deeds by which A. B. exercised his power of charging, and of certain dealings in consequence, with the life estate and rent-charges*]; AND WHEREAS the said ——, [*one of the trustees of the power of sale and exchange*] died before the date and execution of the indenture next hereinafter recited; AND WHEREAS by an indenture bearing date the —— day of ——, indorsed upon the said indenture of the —— day of ——, [*the settlement*] and made or expressed to be made between [*parties*] the said ——, in pursuance of a power in that behalf contained in the said indenture of the —— day of —— [*the settlement*], was duly appointed to be a trustee jointly with the said ——, in the place and stead of the said ——, for all and every of the purposes for which the said ——, and ——, were appointed trustees in and by the said indenture of the —— day of ——, [*the settlement*] and the proper conveyance was made to the surviving and new trustee (*c*); AND WHEREAS by an indenture of appointment, release, and exchange, bearing date the ——

—of the copyholds having been surrendered accordingly;

—of the death of one of the trustees of the settlement;

—of the appointment of a new trustee, and conveyance accordingly;

—of an exchange of part of the settled

(*b*) This is not the usual method of settling copyholds; see ante, Vol. 4, p. 547, n. (*f*).

(*c*) The recitals as to the trustees are required to explain the recitals of the subsequent exchange and purchase. If there had been no dealings with the estate in which the names of the trustees appeared since the settlement, the recitals as to the trustees would be omitted; for it is immaterial for the purpose of barring the entail who are the trustees.

Recital as to the trustees of the settlement.

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hereditaments for other hereditaments;

day of ——, grounded so far as the same operated as a release on a lease for a year, and made or expressed to be made between [*parties*], upon an exchange effected by the said ——, and —— with the said ——, in pursuance of a power of exchange to them the said —— and ——, limited by the said indenture of the —— day of ——, [*the settlement*], the pieces or parcels of land and other hereditaments mentioned in the second schedule to the said indenture now in recital, being further part of the hereditaments hereinafter mentioned, and intended to be hereby granted and released, were duly appointed, conveyed, and settled to the uses &c., [*setting out the form of the reference to the uses of the settlement from the exchange-deed: see the form, ante, Vol. 3, p. 287.*];

—of the birth and majority of the tenant in tail;

AND WHEREAS the said C. B. is the first son of the body of the said A. B., on the body of the said E. B. begotten (*d*), and attained the age of twenty-one years on the —— day of ——;

—of a purchase by the trustees of the settlement, and the conveyance and settlement accordingly;

AND WHEREAS by an indenture of release, bearing date the —— day of ——, grounded on a lease for a year, and made or expressed to be made between [*parties*], after reciting (amongst other things), that the said —— and ——, in pursuance of a power of sale and exchange, limited to them by the said indenture of the —— day of ——, [*the settlement*], had sold or conveyed divers pieces or parcels of land, tenements, and hereditaments comprised in the said indenture of the —— day of ——, [*the settlement*], and had received the purchase-money for the same, amounting in the whole to £——, It was by the said indenture now in recital witnessed, that in consideration of the said sum of £—— to the said A. B. paid by the said —— and ——, and for the other considerations therein mentioned, the said A. B. did grant, release, and confirm unto the said —— and ——, All that capital messuage or mansion-house, called ——, and all the lands called ——, therein particularly mentioned, being further part of the hereditaments hereinafter mentioned, and intended to be hereby granted and re-

(*d*) In this recital the language of the limitation of the estate tail should be followed.

leased, To hold the same unto the said —— and ——, their heirs and assigns, To the uses, &c. [*setting out the reference to the uses of the settlement from the deed: see the form, ante, Vol. 3, p. 287*]; AND WHEREAS the said A. B. and C. B. are desirous of barring and defeating the estate in tail male, and all other estates tail of the said C. B., in the manors or lordships, messuages, farms, lands, and hereditaments hereinafter mentioned, and intended to be hereby granted and released, and covenanted to be surrendered respectively, and all remainders, reversions, estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of such estate in tail male, or estates in tail, (but without prejudicing or disturbing the uses or estates respectively limited by the said indenture of the —— day of ——, [*the settlement*], or by the said several other hereinbefore recited indentures, by reference to the said last-mentioned indenture, which are prior to the uses or estates thereby limited to the first son of the body of the said A. B. on the body of the said E. B. to be begotten in tail male, and without prejudicing or disturbing any of the powers, privileges, or exemptions to the said precedent uses, or estates respectively belonging or annexed, or exerciseable during the continuance thereof respectively); and also of conveying, surrendering, and assuring the same premises respectively, to the uses and in manner hereinafter mentioned, (subject and without prejudice to the said precedent uses or estates, and to the said powers, privileges, or exemptions to the same respectively belonging or annexed or exercisable during the continuance thereof respectively, except so far as the joint power of appointment hereinafter limited to the said A. B. and C. B. shall overreach the use or estate limited by the said indenture of the —— day of ——, [*the settlement*], or by reference thereto) to the said A. B. and his assigns, for his life, and the powers, privileges, or exemptions to the same use or estate belonging, annexed, or exercisable during the continuance thereof: NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire, and in consideration of the premises, he, the said A. B., so far as relates to the use or

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—of the desire to bar the entail;

—without prejudice to the preceding estates or powers;

—and to resettle the estates.

Witnesseth conveyance to a releasee.

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estate to which he is entitled for his life as aforesaid doth by these presents, (made in pursuance of an act, &c. *supra, p.* 266), grant, release, and confirm (*e*), and the said C. B. (with the consent of the said A. B., testified by his being a party to and executing these presents), doth by these presents (made in pursuance of the act aforesaid), grant, release, dispose of, and confirm unto the said E. F. and his heirs, ALL THAT &c. [*parcels as originally described in the settlement, and now subject thereto*]: All which hereditaments hereinbefore described are all the freehold hereditaments comprised in the said indenture of the —— day of ——, [*the settlement*], excepting such of the freehold hereditaments comprised in the same indenture as have been sold or given in exchange upon any sale or exchange which has been made in pursuance of the power of sale and exchange in the same indenture contained; AND ALSO by way of conveyance, and not of exception, ALL THAT &c. [*parcels taken in exchange*], (all which said hereditaments lastly hereinbefore described are the pieces or parcels of land and other hereditaments comprised in the second schedule to the said indenture of the —— day of ——, [*the exchange deed*]: AND ALSO ALL THAT &c., [*parcels purchased*]: All which hereditaments lastly hereinbefore described are the hereditaments comprised in the said indenture of the —— day of ——, [*the conveyance*]; AND ALSO all and singular other the freehold manors or lordships, messuages, farms, lands, and hereditaments (if any) which either expressly or by reference, or by

Parcels originally comprised in and remaining subject to the settlement;

—and those taken in exchange;

—and those purchased;

—and generally all freehold hereditaments subject to the settlement.

Preservation of powers and estates on a resettlement.

(*e*) The tenant for life joins in the conveyance for the purpose of passing his life-estate, so far as to subject it to the joint power of appointment subsequently limited, in order that under that power certain estates may be created to take precedence of the life estate, but that subject thereto the old life-estate, with its appendant powers of leasing and sale and exchange may be restored. It is of considerable importance to preserve the powers belonging to the old life estate, or connected therewith, because by no other means can the jointures, terms, and charges prior to the estate-tail be overreached. (See 1 Sugd. Pow., Ch. II., sect. 111. See too, as to Irish estates, the act 4 & 5 Will. 4, c. 92. For cases in which the consent of the protector is required, and it is not intended to affect his estate, see infra, Preced. XXXIV, p. 318.

any other means or in any other manner, are now subject to the subsisting uses of the said indenture of the —— day of ——, [*the settlement*], [*general words*], TO HAVE AND TO HOLD the said manors or lordships, messuages, farms, lands, and hereditaments, and all and singular other the premises hereinbefore granted and released, or expressed and intended so to be, unto the said E. F. and his heirs, (subject and without prejudice to such charges and incumbrances as were subsisting on the said premises or any of them, before the execution of the said indenture of the —— day of ——, [*the settlement*], and are still continuing; And also subject and without prejudice to the said security intended to be made by the said indenture of the —— day of ——, [*the charge by A. B.*], and the principal monies and interest due thereon, as to such part and parts of the said premises, as were comprised in the same indenture, and also subject and without prejudice to the said term of ninety-nine years, by the said indenture of the —— day of ——, [*the settlement*], or by reference thereto, limited as aforesaid, and the subsisting trusts thereof, and also to the use or estate by the same indenture, or by reference thereto, limited in remainder to trustees, and their heirs, during the life of the said A. B., to preserve contingent remainders, and the powers to the same estate belonging or annexed, or exercisable during the continuance thereof, and to the said rent-charges of £——, and £——, and the powers and remedies, and term of years for securing the same; And also subject and without prejudice to the said term of 1000 years, and the trusts thereof; But freed and discharged from the said estate in tail male, and all other estates tail of the said C. B., and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination, or in defeazance of such estate in tail male, or estates in tail), TO THE USES, upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter limited, declared, expressed, and contained, or referred to, of, and concerning the same, (that is to say), TO SUCH USES, upon and for such

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Habendum to the releasee;

—subject to charges existing prior to the settlement;

—and to a charge created under a power;

—and to the estates and powers preceding the estate tail;

—but discharged from the entail.

To uses.

To such uses as the tenant for

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life and tenant in tail appoint;

trusts, intents and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations as the said A. B. and C. B. shall, at any time or times, by any deed or deeds, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of, and attested by two or more credible witnesses, from time to time, jointly direct, limit, or appoint, and for default of, and until such joint direction, limitation, or appointment, and so far as no such joint direction, limitation, or appointment shall extend, To SUCH USES, &c., [*ut supra, as C. B. shall appoint, and in default, &c.*], To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, which, under and by virtue of the said indenture of the —— day of ——, [*the settlement*], or by reference thereto, were subsisting or capable of taking effect immediately before the sealing and delivery of these presents, so and in such manner as to corroborate and confirm the same uses, trusts, intents, purposes, powers, provisoes, agreements, and declarations (*f*): AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the said desire, he the said A. B., so far as relates to his own acts and deeds, doth hereby, for himself, his heirs, executors, and administrators, and the said C. B., so far as relates to his own acts and deeds, doth hereby, for himself, his heirs, executors, and administrators, covenant with the said E. F., his heirs, and assigns, in manner following; (that is to say), that the said A. B., and the said C. B., with the consent of the said A. B., to be duly given, in manner required by law, with respect to the consent of the protector, in cases of barring estates tail in copyhold hereditaments (*g*), shall and

—and in default, as tenant in tail appoints;

—and in default, to the uses of the old settlement.

Witnesseth further—covenant to surrender the copyholds.

Limitations on disentailing with a view to resettlement.

(*f*) See supra, p. 310, n. (*e*). The limitations in the text, viz. a general power or powers of appointment, and subject thereto to the old uses, are employed when a new settlement is intended to be immediately executed. The new settlement is made by a separate deed, to avoid the expense of enrolling the deed containing the powers and limitations.

Disentail of copyholds.

(*g*) If the copyhold had been vested in trustees in the usual manner, (see supra, p. 307, n. (*b*)), the covenant should express, that their con-

will surrender, or cause to be surrendered, according to the custom or respective customs of the manor or manors respectively, of which the same hereditaments are respectively holden, ALL THAT, &c., [*copyhold parcels*], all which hereditaments lastly hereinbefore mentioned, and covenanted to be surrendered, are the hereditaments by the said indenture, of the —— day of ——, [*the settlement*], covenanted to be surrendered, (except such of the hereditaments by the same indenture covenanted to be surrendered, as have been sold or given in exchange, upon any sale or exchange which has been made, in pursuance of the powers of sale and exchange, in the same indenture contained as aforesaid): AND ALSO all and singular other the copyhold hereditaments, (if any), which either expressly, or by reference, or by any other means, or in any other manner, are, either at law or in equity, now subject to the uses or trusts by the said indenture of the —— day of ——, [*the settlement*], expressed or mentioned with respect to the hereditaments thereby covenanted to be surrendered; [*general words*], (subject and without prejudice to such charges and incumbrances, (if any), as were subsisting on the same premises, or any of them, before the execution of the said indenture of the —— day of ——, [*the settlement*], and are still continuing; And also subject and without prejudice to the said term of ninety-nine years, or the estate or interest in the said copyhold hereditaments corresponding therewith, and to the trusts thereof; And also subject to the subsisting use, or estate, limited in remainder to trustees, and their heirs, during the life of the said A. B., and the powers to the same estate belonging or annexed, or exercisable, during the continuance thereof, and to the said rent-charges of £——, and £——, respectively, and the powers and remedies, and terms of years,

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—subject to the prior estates and powers;

currence in the surrender should be procured; for, although the entail, being equitable, can be barred by the cestui que trusts alone, by surrender or deed, yet the resettlement cannot be completely made, without the concurrence of the persons in whom the legal estate is vested. The covenant to surrender has, of course, no effect in barring the entail. See 3 & 4 Will. 4, c. 74, sects. 50, 53, and infra, Precedent XXXV, p. 321.

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for securing the same, and subject, and without prejudice to the said term of 1000 years, and the trusts thereof, so far and in such manner as the said rent-charges, powers, and remedies, and terms of years, and trusts respectively, subsist in, or affect the said copyhold hereditaments; But freed and discharged from the estate in tail male, and all other estates tail of the said C. B., and all remainders and reversions, estates, rights, titles, interests, and powers, to take effect after the determination, or in defeazance of such estate in tail male, or estates in tail), To THE USES, upon, and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained, or referred to, of, and concerning the same respectively; (that is to say), As TO ALL THAT, &c., [*description of certain parts of the copyholds*], with their rights, members, easements, and appurtenances (*h*); To THE USE of the said —— and ——, and their heirs, to be holden according to the custom of the manors of which the same are respectively holden, and at and under the rents, fines, heriots, suits, and services therefore due, and of right accustomed, and upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as shall or may as nearly correspond with, or be similar to the uses, trusts, intents, and purposes, powers, provisoes, agreements, and declarations, hereinbefore declared, expressed, contained, or referred to, of and concerning the said hereditaments and premises hereinbefore granted and released, or expressed and intended so to be, (including the joint power of appointment hereinbefore limited to the said A. B. and C. B. as aforesaid), as the different nature and quality of the same premises respectively, and the rules of law and equity will admit, but not so as to increase or multiply charges: AND AS TO the residue of the said copyhold hereditaments hereinbefore particularly mentioned and covenanted to be surrendered TO THE USE OF —— and ——,

—but discharged from the entail.

To uses.

As to part to the old trustees upon trusts to correspond with the uses of the freeholds.

And as to the residue, to other trustees, upon trusts to correspond

(*h*) See ante, Vol. 4, p. 217.

[*the trustees of an intended new settlement*], and their heirs, to be holden, according to the custom of the manors, of which the same are respectively holden, and at and under the rents, fines, heriots, suits, and services therefore due, and of right accustomed, and upon and for such trusts, &c. [*ut supra, with respect to the other copyholds*] (*i*). IN WITNESS &c.

OF FREEHOLDS AND COPYHOLDS.

with the uses of the freeholds.

XXXII.

PROTECTOR'S *Consent to the Barring of an Estate Tail* (*a*).

PROTECTOR'S CONSENT.

TO ALL TO WHOM these presents shall come, A. B., of &c., [*the actual protector*], and E. B., his wife, [*the person who would be protector if A. B. were dead*] (*b*), severally send greeting. [*Recital of two settlements, (see the form of reciting limitations, supra, pp. 304, 306, and supra, p. 306, n. (a),), and of subsequent events, by which it appears A. B. is first tenant for life, with remainder to E. B. for life, with remainder to C. B., in tail.*] AND WHEREAS

Recital of settlements;

—of the protectors' desire to

(*i*) In this case the copyholds included in the first limitation were not intended to be settled anew, and were therefore to be surrendered to the use of the trustees of the existing settlement; but the copyholds included in the second limitation were intended to be settled anew, and were therefore to be surrendered at once to the trustees of the new settlement, to avoid the expense and trouble of two surrenders.

Limitation of the copyholds.

(*a*) The protector's consent may be given by the same or a distinct deed; see the Act 3 & 4 Will. 4, c. 74, s. 42, and if the consent be given by a distinct deed, such consent is to be deemed absolute and unqualified, unless it expressly refer to a particular assurance.

Protector's consent by distinct deed.

(*b*) In this case the husband and wife were successive tenants for life, and protectors of the settlement, and were abroad together, and it was necessary, according to the directions of a will, that the entail should be barred, and the estate resettled by a particular day. The consent was therefore prepared in this form, in order that if the husband had died before the instrument arrived, the wife might consent alone.

Explanation of the form of the consent.

PROTECTOR'S CONSENT.

give their consent to the barring the entail.

the said A. B. and also the said E. B. are desirous of executing these presents, for the purpose of giving the consent of him, the said A. B., as protector of the settlement, and also (in case, and so far as the same may be necessary), the consent of the said E. B., as protector of the settlement, to any disposition which shall be made by the said C. B., of the said manors, messuages, farms, lands, and other hereditaments, comprised in or subject to the subsisting uses of the said indenture of the —— day of ——. NOW THESE PRESENTS WITNESS, that for effectuating the said desire in this behalf, they, the said A. B. and E. B., do, and each of them doth by these presents, consent to every or any disposition which the said C. B. shall make of the said manors, messuages, farms, lands, and other hereditaments comprised in or subject to the subsisting uses of the said indenture of the —— day of ——, or any of them, or of any part thereof; and also of the said manor, messuages, farms, lands, and other hereditaments comprised in or subject to the subsisting uses of the said indenture of the —— day of ——, or of any of them, or of any part thereof, either for the purpose of making such settlement of the said premises respectively, as is in that behalf directed by the said will of the said —— (*c*), or for any other purpose as by the said C. B. shall be thought fit, and either after the said C. B. shall have barred the estates in tail male, to which he is entitled under the said indentures of the —— day of ——, and the —— day of —— respectively as aforesaid, or at the same time when he shall bar such estate in tail male. IN WITNESS &c.

Witness consent accordingly.

(*c*) This was a will, which settled other estates on the same parties, on condition of their disentailing and resettling the entailed estate within a particular time.

XXXIII.

POWER OF ATTORNEY *by the* PROTECTOR *of a* SETTLEMENT *to execute Deeds for* BARRING *an* ENTAIL, *and resettling an Estate in compliance with the Injunction of a Will.*

POWER OF ATTORNEY BY PROTECTOR OF SETTLEMENT TO CONSENT.

TO ALL TO WHOM these presents shall come, A. B., of &c., [*protector*], sends greeting. [*Recital of the settlement, see supra, p. 315, n. (b), and of subsequent events, and of the will enjoining a resettlement on pain of forfeiture of other devised estates*]. AND WHEREAS the said A. B. is desirous of appointing E. F., of &c., G. H., of &c., and I. K., of &c., and each or any of them, his attornies and attorney for the purposes hereinafter mentioned. NOW THESE PRESENTS WITNESS, that the said A. B. doth by these presents nominate and appoint the said E. F., G. H., and I. K., and each or any of them, the true and lawful attornies and attorney of him the said A. B., for and in the name of him the said A. B., and as his act and deed to sign, seal, and deliver, or otherwise execute, all or any such deeds, consents, dispositions, settlements, conveyances, and assurances as by the said attornies or any of them shall be considered necessary or proper to be executed by the said A. B., in order to a compliance with the said recited direction in the said will of the said ——, with respect to barring and destroying the estates in tail male in the said —— estate, and the said —— estate, and resettling the same estates, or any of them, whether such deeds, consents, dispositions, settlements, conveyances, and assurances, or any of them shall embrace the said —— estate, and the said —— estate properly so called, and so by the said will directed to be resettled, or the same estates, together with any other hereditaments which may not be included under the name of the —— estate, or the name of the —— estate,

Recital of the desire to appoint attornies.

Witness appointment of attornies for the purpose of effectuating the disentailing and resettling certain estates.

POWER OF ATTORNEY BY PROTECTOR OF SETTLEMENT TO CONSENT.

or used in the said will, and for and in the name of the said A. B., to do and join in doing all and every or any acts or things which shall be necessary or fit to be done, in order to the perfecting and giving complete effect to any such deeds, consents, dispositions, settlements, conveyances, and assurances; And also for and in the name of the said A. B., to enter into and carry into effect all or any such arrangements, and to make, do, and execute all such acts, deeds, matters, and things in, or about, or in anywise relating to these presents, as they, the said attornies, or any of them, in their or his discretion shall think expedient or advisable, he the said A. B. hereby agreeing to allow, ratify, and confirm all and whatsoever the said attornies, or any of them, shall do or cause to be done by virtue of these presents. IN WITNESS &c.

XXXIV.

BY TENANT IN TAIL, WITH CONSENT OF PROTECTOR.

DEED *by* TENANT IN TAIL, *with the* CONSENT *of the* PROTECTOR, *to* BAR *an* ENTAIL *of* FREEHOLDS.

Parties.

THIS INDENTURE, made &c. BETWEEN C. B., of &c. [*tenant in tail*], of the first part; E. B., of &c. [*protector*], of the second part; and E. F., of &c. [*releasee*], of the third part; WHEREAS, by indentures of lease and release, bearing date respectively the —— and —— days of ——, the release being made or expressed to be made between [*parties*] and by a fine sur conuzance de droit come ceo &c., duly levied in or as of —— term, in the —— year of the reign of his late majesty, king ——, before his majesty's justices of assize for the county of ——, the manors or lordships, messuages, lands, and hereditaments, hereinafter particularly mentioned or referred to, and intended to be hereby granted and released, were conveyed and assured, and by the said indenture of release, limited To the use of

Recital of settlement;

BY TENANT IN TAIL, WITH CONSENT OF PROTECTOR.

the said A. B. and his assigns, for his life, without impeachment of waste, with remainder To the use of the said E. B. and her assigns, for her life, without impeachment of waste, with remainder To the use of the said —— and his heirs during the lives of the said A. B. and E. B., and of the survivor of them, In trust for them, and to preserve contingent remainders, with remainder To the use of the first and other sons of the said A. B., on the body of the said E. B. begotten, or to be begotten, successively, according to their respective seniorities in tail, with divers remainders over(*a*). AND WHEREAS the said C. B. was the only son of the said A. B. on the body of the said E. B. begotten (*b*), and the said C. B. attained his age of twenty-one years on the —— day of ——: AND WHEREAS the said A. B. died on the —— day of ——: AND WHEREAS the said C. B. is desirous of barring and defeating the said estate tail, and all other estates tail of him the said C. B., of or in the manors or lordships, messuages, lands, and other hereditaments hereinafter particularly mentioned or referred to, and intended to be hereby granted and released, and all remainders, reversions, estates, rights, tithes, interests, and powers, to take effect after the determination, or in defeazance of such estate in tail, or estates in tail, and limiting and assuring the same hereditaments and premises to the uses upon the trusts and subject to the power of appointment hereinafter limited and contained, subject nevertheless, and without prejudice to the estates by the said indenture of the —— day of —— limited, which precede the estate in tail, thereby limited to the first son of the said A. B. on the body of the said E. B. to be begotten, and to the powers and privileges to the same preceding estates annexed, or belonging, or exercisable during the continuance thereof, so far as the same estates, powers, and privileges are now subsisting or capable of taking effect; AND WHEREAS the said C. B., as protector of the said settlement, hath agreed to become a party to these presents, for the purpose of giving her consent to the disposition

—of the birth and majority of the tenant in tail;

—of the death of a tenant for life;

—of the desire to bar the entail;

—of the agreement of the protector to consent to such settlement.

(*a*) See supra, p. 306, n. (*a*).

(*b*) See supra, p. 308, n. (*d*).

BY TENANT IN TAIL, WITH CONSENT OF PROTECTOR.

intended to be hereby made by the said C. B., NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire of the said C. B., and in consideration of the premises, he, the said C. B., with the consent of the said E. B., (testified by her being a party to and executing these presents), doth by these presents (made in pursuance of an act, &c., *supra, p.* 266), grant, release, dispose of, and confirm unto the said E. F. and his heirs, ALL THAT &c. [*parcels*] the particulars of all which said manors or lordships, messuages, farms, lands, and other hereditaments, according to the present divisions, inclosures, quantities, tenancies, and rent thereof, are specified in the schedule hereunder written, or hereunto annexed: AND ALSO all and singular other the manors or lordships, messuages, lands, and hereditaments (if any) which are now subject at law or in equity to the subsisting uses of the said indenture of the —— day of —— [*General words*]: TO HAVE AND TO HOLD the said manors or lordships, messuages, farms, lands, and hereditaments, and all and singular other the premises hereby granted and released, or expressed and intended so to be, unto the said E. F. and his heirs (subject nevertheless and without prejudice to the estates by the said indenture of the —— day of ——, limited, which precede the estate in tail by the same indenture limited to the said C. B., and to the powers and privileges to the same precedent estates annexed or belonging, or exercisable during the continuance thereof, so far as the same estates, powers, or privileges are now subsisting, or capable of taking effect, but freed and discharged from the said estate in tail, and all other estates tail of the said C. B., and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination of such estate or estates in tail), TO SUCH USES, &c. [*Uses and declaration to bar dower in favour of C. B., ante, Vol.* 3, *pp.* 214, 215.] IN WITNESS &c.

Witnesseth conveyance to a releasee.

Parcels.

Habendum.

XXXV.

MEMORANDUM *of a* SURRENDER *of* COPYHOLDS *for barring an Estate Tail in Remainder, expectant upon the Decease of a Tenant for Life, without Issue Male, the Consent of the Tenant for Life as Protector having been given by a separate Deed* (*a*).

MEMORANDUM OF SURRENDER TO BAR ENTAIL IN COPYHOLDS.

MANOR of ——, in the county of ——. } WHEREAS, at a court baron and customary court, holden in and for this manor, on the —— day of ——, X. Y., of &c., was admitted tenant to all that &c., [*parcels from the admittance*], with their rights, easements, and appurtenances, to be holden at the will of the lord, according to the custom of the manor, and by and under the rents, fines, heriots, suits, and services therefore due and of right accustomed: AND WHEREAS the said X. Y. duly made, signed, and published his last will and testament in writing, bearing date the —— day of ——, and thereby gave and devised all his freehold and copyhold hereditaments, situate &c. [*to M. B. for life, remainder to A. B. for life, remainder to the first and other sons of A. B. in tail male, remainder to the second and other sons of M. B. in tail male, with remainders over*]: AND WHEREAS at a court baron and customary court, holden in and for this manor on the —— day of ——, in the said year, was presented a surrender out of court, made on the —— day of —— by the said X. Y., of all his hereditaments whatsoever, copyhold of this manor, with their and every of their appurtenances, To such uses, intents, and purposes as he the said

Recital of the admission of a tenant in fee;

—of his having created life estates, with remainders in tail, by will;

—of the presentment of a surrender by the testator, to the use of his will;

(*a*) A legal entail of copyholds can be barred by surrender alone, but an equitable entail of copyholds may be barred either by surrender or by deed entered on the court rolls. The consent of the protector may be given in either case by deed to be entered on the rolls, or in person. See the statute 3 & 4 Will. 4, c. 74, ss. 50—53.

Disentailment of copyholds.

MEMORANDUM OF SURRENDER TO BAR ENTAIL IN COPYHOLDS.

—of the death of the testator;

—of the admission in fee of the first tenant for life.

X. Y. then had or should at any time thereafter by his last will and testament in writing give, devise, limit, or appoint the same; AND WHEREAS the said X. Y. died on the —— day of ——, without having revoked or altered his said will: AND WHEREAS at a court baron and customary court, holden in and for this manor, on the —— day of ——, the said M. B. was admitted, to him and his heirs, according to the form and effect of the said will of the said X. Y., to the said hereditaments and premises, to which the said X. Y. was admitted at the said court, holden on the —— day of ——: AND WHEREAS the said M. B. died on the —— day of ——, leaving the said C. B. his second son:

Admission in fee of the second tenant for life;

AND WHEREAS at a court holden in and for the said manor, on the —— day of ——, the said A. B. was admitted, to him and his heirs, as the eldest son and heir-at-law of the said M. B., to the said hereditaments and premises, to which the said M. B. was admitted, to him and his heirs at the said court holden for this manor, on the —— day of ——, under the will of the said X. Y. as aforesaid:

—of such admissions having been erroneous;

AND WHEREAS the said several admissions of the said M. B. and A. B. were erroneous, inasmuch as they ought respectively to have been admitted as tenants for life, under the limitations contained in the said will of the said X. Y., and not as tenants in fee:

—of the present tenant for life having no issue;

AND WHEREAS the said A. B. hath no issue:

—of the protector's consent to bar the entail having been given by a separate deed;

AND WHEREAS by a deed-poll under the hand and seal of the said A. B., bearing date the —— day of ——, he, the said A. B., (as protector of the settlement made by the said recited will), gave and granted his absolute and unqualified consent and approbation to any surrender or surrenders, or disposition or dispositions, by deed or deeds, or other assurance or assurances, which should be made or executed by the said C. B., either on the day of the date of the said deed-poll, or at any time or times thereafter, of all or any of the copyhold messuages, farms, lands, and hereditaments devised by the said will, or then subject at law or in equity to the said settlement made by the same will for barring and defeating the estate in tail male of him the said C. B. of and in the same premises, and all estates, powers, rights, and interests to take effect

MEMORANDUM OF SURRENDER TO BAR ENTAIL IN COPYHOLDS.

after or in defeazance of such estate in tail male, and for limiting or assuring the same premises (subject and without prejudice to the estate for life of the said A. B., and the estates in tail male to his first and other sons successively, of and in the same hereditaments and premises, and all powers, privileges, and exemptions annexed to such estate for life of him the said A. B.), To the use of, or in trust for, the said C. B., his heirs and assigns for ever, or otherwise, as he the said C. B. should think fit, according to the customs of the several manors of which the same premises respectively were holden: AND WHEREAS the said C. B. was desirous, for the purpose of barring and defeating his said estate in tail male, and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination, or in defeazance of such estate in tail male, to make such surrender as is hereinafter mentioned to have been made. NOW THEREFORE be it remembered, that for the purpose aforesaid, he, the said C. B., in his proper person, this —— day of ——, came before ——, the deputy steward of ——, steward of the said manor of ——, and did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of his said deputy steward, according to the custom thereof(*b*), ALL

—of the desire to bar the entail.

Memorandum of surrender.

Parcels.

(*b*) If the surrender be made in court, the instrument will run after a form of this nature :—

The manor of ——, in the county of ——. } A General Court Baron of ——, Lord of the said manor, holden in and for the said manor on the —— day of ——, in the year of our Lord ——. Before ——, deputy steward of ——, steward of the said manor.

Whereas, &c. [*recitals as in the text*]. NOW THEREFORE, for the purpose aforesaid comes the said C. B. in his proper person, and surrenders into the hands of the Lord of this manor by the hands and acceptance of his deputy steward, according to the custom thereof, All, &c. [*parcels —— general words as in the text*]; To the use of him the said C. B., &c. [*as in the text*].

MEMORANDUM OF SURRENDER TO BAR ENTAIL IN COPYHOLDS.

AND SINGULAR the said messuages, lands, hereditaments, and premises to which the said M. B. was admitted at the said court holden on the —— day of ——, and to which the said A. B. was admitted at the said court holden on the —— day of —— as hereinbefore is mentioned, And all other lands or hereditaments, if any, holden of the said manor, which are now subject at law or in equity to the uses of the said will of the said X. Y., TOGETHER with all and singular commons and commonable rights, ways, paths, passages, rights, members, and appurtenances whatsoever to the said messuages, lands, hereditaments, and premises belonging, or in anywise appertaining; AND ALL THE ESTATE, rights, title, interest, use, trust, benefit, property, claim, and demand whatsoever of him the said C. B., of, in, to, or out of the same premises, and every part thereof, TO THE USE of him the said C. B., his heirs and assigns for ever, at the will of the lord, according to the custom of the said manor, and by and under the rents, fines, heriots, suits, and services therefore due, and of right accustomed, subject and without prejudice to the estate for life of the said A. B., and the estates in tail male of his first and other sons successively of and in the same premises, and all powers, privileges, and exemptions annexed to such estate for life of the said A. B., but freed and discharged from the said estate in tail male of him the said C. B., and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination or in defeazance of such estate in tail male.

General words.

And all the estate, &c.

To the use of the tenant in tail in fee;

—subject to the precedent estates and powers.

Taken and accepted the day and year first above written by me

M. N., Deputy Steward of the said Manor.

XXXVI.

STOCK IN THE NAME OF THE ACCOUNTANT-GENERAL.

DEED *by* TENANT *for* LIFE *and* TENANT IN TAIL *to* BAR *an* ENTAIL *of* LAND *to be* PURCHASED *with the* MONIES *arising from a* SUM *of* STOCK *standing in the name of the* ACCOUNTANT-GENERAL *of the* COURT *of* CHANCERY (*a*).

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*tenant for life*], of the first part; C. B., of &c., [*tenant in tail*], the eldest son of the said A. B., of the second part; and E. F., of &c., [*assignee and trustee*], of the third part; [*Recital of the will of M. B., devising lands to his sons successively for life, with remainders to their sons successively in tail male, with a direction to the executors, during the minorities of the respective tenants for life, to apply the surplus rents and profits of a plantation in the West Indies in paying off certain debts, and afterwards to accumulate and lay out the same in the purchase of lands in ——, to be settled as the devised estates—of the death of the testator without revoking or altering his will—of the*

Parties.

Recital of the creation by will of the entail, and of certain subsequent events;

(*a*) Much inconvenience was formerly experienced with respect to money directed to be laid out in the purchase of land to be settled; for it was held by courts of equity, that a tenant in tail could not acquire an absolute interest in the money, (unless he had also the reversion in fee), but that it must be laid out in the purchase of land and a recovery suffered. The inconvenience was first attempted to be remedied by the statute 39 & 40 Geo. 3, c. 56, and subsequently by the statute 7 Geo. 4, c. 45; but these statutes have been repealed by the late statute 3 & 4 Will. 4, s. 70, and money directed to be laid out in the purchase of land to be settled, placed (sect. 71,) on the same footing with respect to barring an entail as the land itself. The provisions of the act are likewise extended to lands of any tenure, which it has been directed shall be sold, and the money arising from the sale laid out in the purchase of lands to be settled.

Method of barring entails of money directed to be laid out in the purchase of land to be settled.

STOCK IN THE NAME OF THE ACCOUNTANT-GENERAL.

probate thereof—of the general decree in a suit in Chancery for establishing and carrying into effect the trusts of the will—of the deaths without issue of the tenants for life prior to A. B.]: AND WHEREAS the debts mentioned in the said will, and all other the debts and the funeral and testamentary expenses of the said testator, have been paid and satisfied; AND WHEREAS, &c., [*Recital of an order of the court that the residue of certain monies which had arisen from the West Indian plantation, and were then standing in the name of the Accountant-General, should be laid out in the purchase of stock in his name, upon an account to be intituled "Money to be laid out in the purchase of Lands," and that the interest thereof should be paid to A. B. for life—of the money having been so laid out in the purchase of £——, £3 per Cent. Consolidated Bank Annuities*]; AND WHEREAS no purchase of lands has ever been made, and the said sum of £——, £3 per Cent. Consolidated Bank Annuities continues standing in the name of the said Accountant-General in trust in the said cause to the account aforesaid, and the dividends which have accrued upon the said sum of £——, £3 per Cent. Consolidated Bank Annuities, have from time to time been paid to the said A. B., in pursuance of the said order of the —— day of ——: AND WHEREAS the said C. B. is the eldest son of the said A. B. (*b*), and attained his age of twenty-one years on the —— day of ——: AND WHEREAS the said C. B. is desirous, with the consent of the said A. B., of barring the estate in tail male of him the said C. B., of or in the lands in the purchase of which the said sum of £——, £3 per Cent Consolidated Bank Annuities, or the money to arise from the sale thereof, is directed or subject to be laid out as aforesaid, and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination, or in the defeazance of such estate in tail male, and of acquiring an absolute estate in the said sum of £——, £3 per Cent Con-

—of the debts, &c., having been paid;

—of the origin of the stock standing in the name of the accountant-general;

—and of the same being still so standing;

—of the birth and majority of the tenant in tail;

—of the desire to bar the entail;

(*b*) See supra, p. 308, n. (*d*).

solidated Bank Annuities, discharged from the said trusts of laying out the same, or the money to arise from the sale thereof, in the purchase of lands, but subject and without prejudice to the life estate of the said A. B., in the dividends and annual proceeds of the same Bank Annuities, AND the said A. B. has agreed to give his consent to such disposition in manner hereinafter mentioned; AND the said A. B. and C. B. have agreed that the said sum of £——, £3 per Cent. Consolidated Bank Annuities, and the dividends and annual proceeds thereof, shall be assigned to the said E. F., his executors, administrators, and assigns, upon the trusts hereinafter declared of and concerning the same: NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire in this behalf, and in pursuance of the said agreement, he, the said A. B., doth by these presents assign, and the said C. B., with the consent of the said A. B. (testified by his being a party to and executing these presents), doth by these presents assign and dispose of, unto the said E. F., his executors, administrators, and assigns, ALL THAT the said sum of £——, £3 per Cent. Consolidated Bank Annuities, now standing in the name of the Accountant-General of the High Court of Chancery, in trust in the said cause to the account intituled "Money to be laid out in the purchase of Lands," and the dividends and annual proceeds of the same Bank Annuities, AND ALL THE ESTATE, right, title, interest, property, claim, and demand, both at law and in equity, of them, the said A. B. and C. B., and each of them, of, in, to, out of, or upon the said premises and every part thereof, TO HAVE, HOLD, receive, and take the said Bank Annuities and dividends, and all and singular other the premises hereinbefore assigned or expressed and intended so to be, unto the said E. F., his executors, administrators, and assigns, (freed and discharged from the trusts for the laying out of the said sum of £——, £3 per Cent. Consolidated Bank Annuities, or the monies to arise by the sale thereof, in the purchase of lands, and from the said estate in tail male of the said C. B., and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination, or in defea-

STOCK IN THE NAME OF THE ACCOUNTANT-GENERAL.

—and of the consent of the protector;

and of the agreement to assign the stock to a trustee, on certain trusts.

Witnesseth assignment;

—of the stock;

and all the estate, &c.

Habendum to the trustee discharged from the entail.

STOCK IN THE NAME OF THE ACCOUNTANT-GENERAL.

Upon trusts.

zance of such estate in tail male), UPON THE TRUSTS following: that is to say; IN TRUST to permit the said A. B. and his assigns to receive the dividends and annual proceeds of the said Bank Annuities during his life; and SUBJECT thereto, In trust for the said C. B., his executors, administrators, and assigns, for his and their own use and benefit absolutely. IN WITNESS &c.

ANNUITY DEEDS.

General observations.

SEE the observations on the law relating to Annuity Deeds, ante, Vol. I., Art. ANNUITY DEEDS. At present, it will be sufficient to notice that Annuity Deeds generally consist of a grant of the annuity for a life or lives, with powers of distress and entry upon the estates to be charged —of a demise of the same estates to trustees for a term of years, determinable on the same life or lives, upon trusts for securing the annuity, and with the usual trustee clauses—of a covenant by the grantor to pay the annuity, and the usual covenants for title—of covenants by the grantor to do all that may be necessary to enable the grantee to insure the life or lives of the cestui que vie or cestuis que vie—of a declaration of trust of the judgment, which is generally entered up on a warrant of attorney, given as a collateral security—and of a provision for the repurchase of the annuity. The first of the following Precedents is a very good example of the grant of an annuity by a tenant for life, payable during his own life, and secured by all the usual securities; and two other Precedents of Grants of Annuities have been added: but it has not been deemed expedient in so small a collection as the present to devote many pages to a class of deeds, the preparation of which is now, for the most part, confined to a very limited number of practitioners.

Memorial of annuity deeds to be inrolled in Chancery.

It will, of course, be borne in mind that a memorial, according to the form given in the statute 53 Geo. 3, c. 141, (see the declaratory acts, 3 Geo. 4, c. 92, and 7 Geo. 4, c. 54), of every deed or instrument by which a life annuity is granted, must be inrolled in Chancery within thirty days after its execution, unless the annuity come within one of the exceptions mentioned in the 10th section of the statute. See the observations, with respect to the contents of the memorial and its inrolment, and the statutable exceptions, ante, Vol. I., Art. ANNUITY DEEDS: see, too, the Form of the Memorial at the end of the next Precedent.

XXXVII.

FOR SECURING AN ANNUITY FOR THE LIFE OF THE GRANTOR.

DEED *for securing an* ANNUITY *for a* TERM *of Years* DETERMINABLE *on the* LIFE *of the* GRANTOR, *by* DEMISE *of two several Estates for Terms determinable on different Events.* WARRANT *of* ATTORNEY *and* DEFEAZANCE. COVENANT *from the Grantee as to the* REPURCHASE *of the* ANNUITY.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*grantor*], of the first part; C. D., of &c., [*grantee*], of the second part; E. F., of &c., and G. H., of &c., [*trustees*], of the third part. [*Recitals shewing A. B.'s interest in the estates to be charged with the annuity and the existing incumbrances*]. AND WHEREAS the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him of one annuity or clear yearly sum of £——, to be paid to the said C. D., his executors, administrators, and assigns, for the term of ninety-six years, if the said A. B. shall so long live, and to be secured as hereinafter is mentioned, at or for the price or sum of £——: AND WHEREAS in pursuance of the said agreement on the part of the said C. D., he the said C. D. hath this day paid the sum of £——, of lawful money of the United Kingdom, in notes of the Governor and Company of the Bank of England (*a*), to the said A. B.: AND in pursuance of the said agreement on the part of the said A. B., he the said

Recital of title to the grantor's estates;

—of the agreement for the sale of the annuity;

—of the payment of the consideration;

—and of the execution by the grantor of a

(*a*) The statement of the mode of payment of the consideration, (although not essential here), is inserted with a view to the requisitions of the memorial to be inrolled; see the end of the Precedent.

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A. B. hath this day executed a deed-poll or warrant of attorney, bearing even date with these presents, authorizing certain attornies of her Majesty's Court of Queen's Bench at Westminster, or any other attorney of the same court, to confess judgment against the said A. B. in the said court, in an action of debt at the suit of the said C. D. for the sum of £——, besides costs of suit; [*see the Precedent of such a Warrant, infra, Precedent XL.*]; and it has been agreed and is intended that judgment shall be immediately entered up thereupon accordingly (*b*). NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement on the part of the said A. B., and in consideration of the said sum of £—— to the said A. B., by the said C. D., this day paid as hereinbefore is mentioned, (the receipt of which said sum of £—— he the said A. B. doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, and discharge the said C. D., his heirs, executors, administrators, and assigns, and every of them for ever, by these presents), He, the said A. B. doth by these presents give, grant, bargain, sell, and confirm unto the said C. D., his executors, administrators, and assigns, one annuity or clear yearly rent or sum of £——, of lawful money of the United Kingdom, to be paid and payable for and during the term of ninety-six years, to commence and be computed from the day next before the day of the date of these presents and thenceforth next ensuing, and fully to be complete and ended, if the said A. B. shall so long live, and to be charged and chargeable upon, and yearly issuing and payable out of, ALL that,

warrant of attorney to confess judgment.

Witnesseth.

Receipt.

Grant of the annuity to be charged on

Parcels.

(*b*) In considering the securities to be given for an annuity, it must be remembered that, since the statute 1 & 2 Vict. c. 110, sect. 113, the judgment will operate as an equitable charge upon all the property of the grantor, and may consequently prove a very serious inconvenience. See ante, Vol. III. p. 228, note (*i*). See, too, the reports of the hearing before the Lord Chancellor of the case of *Hole* v. *Escott*, 4 My. & Cra. 187; and of the Vice-Chancellor's confirmation of the certificate in the case of *Jones* v. *Winwood*, 10 Sim. 150. A question, too, may arise, whether the equitable charge now created by a judgment will not affect the qualification of members of parliament.

Effect of judgments under the statute 1 Vict. c. 110.

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&c. [*parcels*], AND upon and out of all &c. [*general words*], TO HAVE, HOLD, receive, take, and enjoy the said annuity, yearly rent, or sum of £——, unto the said C. D., his executors, administrators, and assigns, for and during the said term of ninety-six years, to commence and be computed as aforesaid, if the said A. B. shall so long live, to be paid and payable at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by two equal half-yearly payments, (that is to say), on the —— day of ——, and the —— day of —— in every year, without any deduction or abatement whatsoever out of the same, or any part thereof, on account or in respect of any taxes, charges, assessments, or impositions already taxed, charged, assessed, or imposed, or to be hereafter taxed, charged, assessed, or imposed upon the said manors, hereditaments, and premises hereby charged with the payment of the said annuity or yearly rent or sum of £——, or on the said C. D., his executors, administrators, or assigns, or any other person or persons whomsoever, by authority of parliament or otherwise howsoever, or for or in respect of any other matter, cause, or thing whatsoever, the first half-yearly payment of the said annuity or yearly rent or sum to be made on the —— day of —— now next ensuing, if the said A. B. shall be then living; and if the said term of ninety-six years, determinable as aforesaid, shall determine by the decease of the said A. B., on any other day than one of the said half-yearly days of payment, a proportional part of the said annuity, yearly rent, or sum of £——, to be paid to the said C. D., his executors, administrators, or assigns, immediately after the decease of the said A. B. for the time which he, the said A. B., shall have lived of the then current half year (*c*). AND THE SAID A. B. doth hereby, for himself, his heirs, and assigns, covenant, grant, and agree, with and to the said C. D., his executors, administrators, and assigns, in manner following, (that is to say), That if the said annuity, or yearly rent, or sum of £——, or any part thereof, shall at any time or

Habendum for a term, if the grantor so long live.

Power of distress.

(*c*) This provision for the payment of a proportional part of the annuity seems to be unnecessary, since the statute 4 & 5 Will. 4, c. 22.

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times be in arrear or unpaid for the space of twenty-one days next after any of the said days or times whereon the same ought to be paid as aforesaid, Then, and as often as it shall so happen, it shall be lawful for the said C. D., his executors, administrators, and assigns, to enter into and distrain upon all or any part of the said manors, hereditaments, and premises hereby charged with the said annuity or yearly rent or sum of £——, and to sell and dispose of the distress and distresses then and there taken, or otherwise to demean therein according to law, and in like manner as in distresses taken for rent reserved by lease or common demise, To the end and intent that the said C. D., his executors, administrators, and assigns, may be fully paid and satisfied the said annuity or yearly rent or sum of £——, and every part thereof, so in arrear and unpaid as aforesaid; And all costs, charges, and expenses occasioned by the non-payment thereof (*d*). AND ALSO THAT in case the said annuity or yearly rent or sum of £——, or any part thereof, shall at any time or times be in arrear and unpaid by the space of thirty-one days next after any of the days or times whereon the same ought to be paid as aforesaid; Then, and from time to time as often as it shall so happen (although no legal demand shall have been made thereof), it shall be lawful to and for the said C. D., his executors, administrators, and assigns, to enter into and upon, and to hold all and singular the manors, hereditaments, and premises hereby charged with the payment of the said annuity or yearly rent or sum of £——, or any part or parts thereof, and to receive and take the rents, issues, and profits thereof to and for his and their own use, until he or they shall therewith or thereby or otherwise be fully satisfied and paid the arrears of the said annuity or yearly rent or sum of £——, and every part thereof, due at the time of such entry, and which shall afterwards accrue and become due during his or their being in possession of the same premises, together with all such costs, charges,

Power of entry.

(*d*) With respect to powers of distress, see ante, Vol. IV., p. 504, n. (*k*); see, too, ibid, pages 576, 577.

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damages, and expenses whatsoever, as he or they shall sustain by reason of the non-payment thereof, and such possession, when taken, to be without impeachment of waste (*e*).

Witnesseth further.

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement on the part of the said A. B., and in consideration of the said sum of £—— so paid by the said C. D. as hereinbefore is mentioned, and for more effectually securing the payment of the said annuity or yearly rent or sum of £—— to the said C. D., his executors, administrators, and assigns, and in consideration of the sum of ten shillings, of lawful money of the United Kingdom, to the said A. B. paid by the said E. F. and G. H., at or immediately before the sealing and delivery of these presents (the receipt of which they the said E. F. and G. H. do hereby acknowledge), He the said A. B., at the request and by the direction and upon the nomination and appointment of the said C. D. (testified by his being a party to and sealing and delivering these presents), Doth by these presents grant, bargain, sell (*f*), and demise unto the said E. F. and G. H., their executors, administrators, and assigns, THE SAID manors or lordships, or reputed manors or lordships, capital and other messuages, farms, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore charged with the payment of the said annuity or yearly rent or sum of £——, or expressed and intended so to be, TO HAVE AND TO HOLD the said manors or lordships, messuages, lands, tenements, and hereditaments, and all and singular other the premises in the said counties of —— and ——, hereby granted, bargained, sold, and demised, or expressed and intended so to be, with their rights, members, easements, and appurtenances (subject to the charges and incumbrances now affecting the same premises respectively), unto the said E. F. and G. H., their executors, administrators, and assigns, for and during

Demise to trustees of the premises, charged with the annuity.

Habendum as to part of the premises to the trustees for ninety-eight years, if the grantor so long live.

(*e*) With respect to powers of entry, see ante, Vol. IV., p. 504, n. (*k*), p. 577, n. (*c*).

(*f*) As to the insertion of the nominal consideration, and the words "bargain and sell," see ante, Vol. III., p. 579, n. (*c*).

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the term of ninety-eight years, to commence and be computed from the day next before the day of the date of these presents and thenceforth next ensuing, and fully to be complete and ended, if the said A. B. shall so long live, without impeachment of waste; AND TO HAVE AND TO HOLD the said [*the hereditaments in certain other counties in the same form as in the first habendum*], unto the said E. F. and G. H., their executors, administrators, and assigns, for the term of ninety-eight years, to be computed from the day next before the day of the date of these presents and thenceforth next ensuing, and fully to be complete and ended, if the said A. B. and C. B. (*g*) shall jointly so long live.

Habendum as to other part of the premises to trustees for ninety-eight years, if the grantor and his wife so long live.

NEVERTHELESS as to all and singular the premises hereby granted, bargained, sold, and demised, or expressed and intended so to be, with their rights, members, easements, and appurtenances, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, or contained of or concerning the same (that is to say), UPON TRUST, that they the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, Do and shall forthwith enter into the actual possession and immediate receipt of the rents, issues, and profits of the said hereditaments and premises hereinbefore granted and demised, or expressed and intended so to be.

Upon trusts as to all the premises;

—to enter into immediate possession thereof;

AND DO AND SHALL, from time to time, let, set, keep in repair, improve, order, and manage the same premises in all respects in such manner as to them or him shall seem expedient, and with the same powers and authorities in that behalf, to all intents and purposes, as if they or he were actual owners or owner at law and in equity; And in order thereto, Do and shall, from time to time, appoint or employ any agents, receivers, or other persons for the management of the said trust estates and premises, and for collecting, receiving, and recovering the rents, issues, and profits thereof

—and keep in order and manage the same, and employ and pay agents.

(*g*) C. B. was the wife of A. B., the grantor, and it appeared by the recitals that the premises comprised in this habendum belonged to A. B. only during the joint lives of himself and his wife.

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as aforesaid, with any reasonable salary or salaries, and with such powers or authorities as are usual in like cases; And also appoint and employ an auditor of the accounts relating to the said trust estates and premises, at an annual salary not exceeding £—— per annum; And from time to time revoke or vary any such appointment or appointments at pleasure. AND DO AND SHALL, from time to time, by and out of the rents, issues, and profits of the said trust estates and premises which shall be received by them or him under the trusts hereby declared; IN THE FIRST PLACE, pay, or cause to be paid, all taxes, rates, assessments, or impositions whatsoever, which are now or shall or may from time to time hereafter, be taxed, charged, or imposed upon or in respect of the said premises, and which the respective tenants or occupiers thereof shall not be liable to pay, and all other outgoings payable by the landlord in respect of the same premises; AND IN THE NEXT PLACE, pay, discharge, and satisfy all the costs, charges, and expenses to be incurred by them or him in the repairing, improving, or managing the said trust estates and premises, or any part thereof, or in collecting, recovering, and receiving the rents, issues, and profits thereof, and the salaries or allowances of the agents, receivers, auditor, or other persons to be employed from time to time for any of the purposes aforesaid, and all other costs, charges, and expenses whatsoever to be incurred by the said trustees or trustee for the time being in or about the execution of the trusts hereby declared; AND IN THE NEXT PLACE, pay and keep down the interest now due, and which from time to time shall accrue or grow due for the several principal sums of money which appear by these presents to be now charged or secured upon some part or parts of the said trust estates and premises, in manner hereinbefore mentioned and recited, and all arrears and future payments of the several annual sums of money which appear by these presents to be now charged or secured upon the said trust estates and premises, or some part or parts thereof, in manner hereinbefore mentioned and recited, at such time or times, and in such order of priority as the same interest and annual sums of money respectively are or

Trusts of the rents and profits;

—to pay rates and taxes;

—and the expenses of the trust;

—and keep down interest on mortgage debts, and the annual sums charged on the premises;

shall respectively be payable; AND IN THE NEXT PLACE, pay and discharge unto the said C. D., his executors, administrators, or assigns, the said annual sum or yearly rent-charge of £——, intended to be hereby secured, as and when the same shall become due and payable under or by virtue of these presents; And also all such costs, charges, or expenses, if any, as the said C. D., his executors, administrators, or assigns, shall or may from time to time incur or be put unto in or about the recovery or obtaining payment of the same annuity or yearly rent-charge, or any part thereof; And also such sum or sums of money (if any) as the said C. D., his executors, administrators, or assigns, shall have paid in respect of any such additional premium or premiums of insurance as are hereinafter mentioned, and covenanted to be paid by the said A. B.: AND DO AND SHALL from time to time pay all the surplus or residue (if any) of the said rents, issues, and profits which shall remain in the hands of the said trustees or trustee for the time being, after answering and satisfying the trusts and purposes aforesaid, unto the said A. B., his executors, administrators, or assigns, for his and their proper use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, at any time or times, to fell or cut down, or cause to be felled or cut down any timber upon the said trust estates, and either to apply the same for repairs, or to sell the same, and to apply the monies arising thereby in the same manner as hereinbefore is directed with respect to the rents, issues, and profits of the said trust estates. [*Usual power to the trustees to give receipts, see ante, Vol. IV., p. 323. Power to C. D., his executors, administrators, and assigns, to appoint new trustees, ante, Vol. IV., p. 324. Clauses for the indemnity of trustees and the payment of their expenses, ibid. pp. 326, 327.*] PROVIDED ALWAYS, and it is hereby agreed and declared, that nothing hereinbefore contained shall extend to charge or make subject or liable any of the hereditaments respectively comprised in the said terms of ninety-

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—and pay the annuity now granted, and all costs and extra premiums;

—and the residue to the grantor.

Power for the trustees to fell timber for the purposes of the trust.

Trustee clauses.

Proviso, that the present deed shall not charge any existing charges,

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eight years, determinable respectively as aforesaid, with or to any of the existing charges or incumbrances hereinbefore mentioned or referred to, any further or more extensively than the same premises respectively were and stood charged with, or subject to the same respectively, immediately before the sealing and delivery of these presents. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he the said A. B., his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, for and during the said term of ninety-six years, if the said A. B. shall so long live, the said annuity, yearly rent, or sum of £——, clear of all deductions whatsoever, as and when the same shall become due and payable as aforesaid, by virtue of and according to the true intent and meaning of these presents; And also such proportional part thereof as aforesaid (*h*). AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns; And also, as a separate covenant, with the said E. F. and G. H., their executors, administrators, and assigns, THAT he the said A. B. now hath in himself good right, full power, and lawful and absolute authority to grant and confirm the said annuity, yearly rent, or sum of £——, and the said powers and remedies for recovering and compelling payment thereof as aforesaid, and to charge the same upon all and singular the said hereditaments and premises hereinbefore mentioned; AND ALSO to grant, bargain, sell, and demise the same premises unto the said E. F. and G. H., their executors, administrators, and assigns, for and during the said terms of ninety-eight years and ninety-eight years, determinable respectively as aforesaid, upon the trusts aforesaid, and according to the true intent and meaning of these presents: AND THAT all and singular the said hereditа-

further than they are already charged.

Covenant by the grantor to pay the annuity.

Covenants by the grantor,

—for right to grant the annuity;

—and demise the hereditaments demised;

—for quiet enjoyment;

(*h*) See supra, p. 332, n. (*c*).

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ments and premises shall, during the said term of ninety-six years, determinable as aforesaid, remain, continue, and be charged with and subject to the said annuity, yearly rent, or sum of £——, and subject and liable to the distress and distresses, entry and entries of the said C. D., his executors, administrators, and assigns, for the recovery of the same, and of all costs, charges and expenses to be occasioned by the non-payment thereof; And shall and may be held, possessed, occupied and enjoyed by the said E. F. and G. H., their executors, administrators, and assigns, for the said terms of ninety-eight years and ninety-eight years, determinable respectively as aforesaid, upon the trusts aforesaid, and according to the true intent and meaning of these presents; AND THAT free and clear, and freely and clearly and absolutely exonerated and for ever discharged, or by the said A. B., or his assigns, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all charges and incumbrances whatsoever, except the charges and incumbrances which appear by these presents. AND FURTHER, that the said A. B., and all and every other persons and person whosoever, having, or lawfully or equitably claiming, or who shall or may have, or lawfully or equitably claim, any estate, right, title, or interest, either at law or in equity, in, to, or out of the said hereditaments and premises hereby charged and granted, bargained, sold, and demised as aforesaid, or expressed and intended so to be, or any of them, or any part or parts thereof, shall and will at any time or times hereafter, upon every reasonable request of the said C. D., his executors, administrators, or assigns, but at the proper costs and charges of him the said A. B., or his assigns, make, do, and execute, or cause and procure to be made, done, and executed all and every such further and other lawful and reasonable acts, deeds, matters, and things whatsoever, (without prejudice to the said now existing charges and incumbrances), for the further, better, and more perfectly charging the said hereditaments and premises, and every part thereof, with the said annuity, or yearly rent or sum of £——, and with such powers and remedies for recovering

—free from incumbrances;

—and for further assurance as to the annuity;

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and enforcing payment thereof as aforesaid; AND ALSO for the further, better, more perfectly and effectually granting, bargaining, selling, demising, assuring and confirming the same premises unto the said E. F. and G. H., their executors, administrators, and assigns, for the residue which shall be then to come and unexpired therein respectively of the said terms of ninety-eight years and ninety-eight years, determinable respectively as aforesaid upon the trusts aforesaid, or for better enabling them to execute and perform the same trusts according to the true intent and meaning of these presents, as by the said C. D., his executors, administrators, or assigns, or the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or his, their, or any of their counsel in the law, shall be reasonably devised or advised and required:

—and the demise;

—and particularly to lease as desired.

AND PARTICULARLY THAT he the said A. B. shall and will, from time to time, exercise such powers of leasing as he is or may be entitled to exercise under any of the hereinbefore recited indentures, in such manner as the trustees or trustee for the time being under these presents shall in that behalf require; AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he the said A. B. shall and will at any time or times hereafter, at the request and desire of the said C. D., his executors, administrators, or assigns, appear in person so often as there may be occasion for so doing, (upon having proper notice thereof), at any office or place of insurance within the cities of London or Westminster, or elsewhere, or shall send the said C. D., his executors, administrators, or assigns, notice of his place of abode, and such vouchers as any such office or offices may require respecting his state of health from time to time, in order that the said C. D., his executors, administrators, or assigns, (if he or they shall think fit), may insure the life of the said A. B. for any sum or sums, not exceeding in the whole the sum of £——; AND ALSO THAT he the said A. B. shall not, nor will at any time hereafter depart from or leave this kingdom, or go or travel upon or beyond

Covenants by the grantor to do all acts necessary to enable his life to be insured by grantee;

—and to give notice when about to do any act which may

the seas, or reside in foreign parts, without giving, every time, one month's notice in writing to the said C. D., his executors, administrators, or assigns, of his intention, in order to enable the said C. D., his executors, administrators, or assigns, to make known the same at the office or offices where the life of the said A. B. shall or may be insured, so that the additional premium or premiums to be thereby incurred, for the purpose of keeping on foot any policy or policies of insurance which may have been effected by him or them on the life of the said A. B., for any sum or sums not exceeding the sum of £—— as aforesaid, may be paid unto the office or offices of insurance where the life of the said A. B. shall be so insured, in order to prevent any loss or damage happening to the said C. D., his executors, administrators, or assigns, by reason of the said policy or policies of insurance becoming void: AND FURTHER, that he the said A. B. shall and will, from time to time, and at all times hereafter, well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators, and assigns, all such additional premiums of insurance as he or they shall or may pay unto any such office or offices in respect of the matters last aforesaid, within the space or time of one month after every such payment shall be made as aforesaid (*i*). AND THIS INDENTURE ALSO WITNESSETH, and it is hereby agreed and declared between and by the parties to these presents, that the judgment so to be entered up against the said A. B. as aforesaid is intended and agreed to be a further security to the said C. D., his executors, administrators, and assigns, for the said annuity or yearly rent or sum of £——, and also for the payment of any sum or sums of money which shall become payable to him or them in respect of any such additional premium or

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require an extra premium to be paid;

—and to repay to the grantee all such extra premiums as may be paid.

Declaration of trust of the judgment to be entered up.

(*i*) These covenants are framed with a view to the usual practice, by which the premium of insurance is reckoned and paid for as part of the annuity purchased, and then the grantee insures (if he pleases) at his own expense, and on his own account. With regard to the respective interests of debtor and creditor in policies of assurance effected by the creditor on the debtor's life, see ante, Vol. 3, pp. 91, 610: see, too, *Ex parte Varnish*, 1 M., D. & Deg. 514.

Method of providing for the insurance of the life of the grantor of a life annuity.

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premiums of insurance as aforesaid; and that no execution or executions shall be issued or taken out upon the said judgment unless and until the said annuity or yearly rent or sum of £——, or some part thereof, or some sum of money in respect of some additional premium or premiums of insurance, or some part thereof, shall be in arrear or unpaid by the space of forty-five days next after the same respectively shall become due and payable; and that in case and when and so often as the said annuity or yearly rent or sum of £——, or any part thereof, or any such sum of money in respect of any additional premium or premiums as aforesaid, shall be in arrear or unpaid by the space of forty-five days next after any day or time on or at which the same respectively ought to be paid as aforesaid, then and in such case, and when and so often as the same shall happen, it shall be lawful for the said C. D., his executors, administrators, or assigns, to sue out such execution or executions upon or by virtue of the said judgment, as he or they shall think fit, for the recovery of the arrears of the said annuity or yearly rent or sum of £——, or of such sum or sums of money in respect of any such additional premium or premiums as aforesaid, (as the case may be), and all costs, charges, and expenses, if any, which the said C. D., his executors, administrators, and assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason of the non-payment thereof (*k*): AND IT IS HEREBY FURTHER AGREED AND DECLARED between and by the parties to these presents, that the said C. D., his executors, administrators, and assigns, shall by and with and out of the monies to be raised by the ways and means lastly hereinbefore mentioned, pay, satisfy, and discharge all the arrears, if any, of the said annuity, yearly rent, or sum of £——, and all and every sums and sum of money, if any, which shall be then payable to him or them in respect of any such additional premium or premiums of insurance as aforesaid; and all costs, charges, and expenses, if any, to be occasioned by the non-payment of the same respectively, and shall pay

Trusts of the money to be recovered by means of the judgment.

(*k*) As to the operation of the judgment, see supra, p. 331, n. (*b*).

the residue and surplus, if any, of the money so to be raised to the said A. B., his executors, administrators, or assigns, for his or their proper use and benefit: AND IT IS HEREBY FURTHER AGREED AND DECLARED, between and by the parties to these presents, that it shall not be necessary for the said C. D., his executors, administrators, or assigns, to revive or cause to be revived the said judgment, or do any act, matter, or thing to keep the same on foot, notwithstanding the same judgment shall have been entered of record for the space of one year or upwards; and that the said A. B., his heirs, executors, or administrators, shall not nor will have, or take or attempt, by any ways or means whatsoever, to have or take any advantage of the want of reviving or keeping the said judgment on foot; and that if he or they shall attempt so to do by action or other legal proceeding or proceedings whatsoever, this present agreement shall and may be pleaded or shewn in bar thereto, any rule or practice of the Courts, or any of them, to the contrary thereof in anywise notwithstanding: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that after the decease of the said A. B., and full payment to the said C. D., his executors, administrators, or assigns, of the said annuity or yearly rent or sum of £——, and all arrears thereof up to the day of the decease of the said A. B., and of all and every such sums and sum of money, if any, as shall have become payable to him or them in respect of any such additional premium or premiums of insurance as aforesaid, and of all such costs, charges, and expenses as aforesaid, the said C. D., his executors, administrators, or assigns, shall, at the request, costs, and charges of the heirs, executors, or administrators of the said A. B., acknowledge satisfaction upon the said judgment on the record thereof, in due form of law, and do any further or other reasonable acts, matters, or things, that may then be required in regard thereto, so that for the doing thereof the said C. D., his executors, administrators, or assigns, be not compelled or compellable to travel from his or their place or places of abode. AND THIS INDENTURE LASTLY WITNESSETH,

FOR SECURING AN ANNUITY FOR THE LIFE OF THE GRANTOR.

Judgment not to require to be revived.

Proviso for the acknowledgment of satisfaction upon the judgment.

Provision for

FOR SECURING AN ANNUITY FOR THE LIFE OF THE GRANTOR.

the repurchase of the annuity.

and the said C. D. Doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors, administrators, and assigns, that in case the said A. B. shall, at any time hereafter, be minded or desirous of repurchasing the said annuity, yearly rent, or sum of £——, and of such his intention shall give seven days' previous notice in writing unto the said C. D., his executors, administrators, or assigns, then and in such case he, the said C. D., his executors, administrators, or assigns, shall and will, upon the expiration of the said seven days for which such previous notice shall be so given as aforesaid, on receiving from the said A. B., or his assigns, full payment of the said annuity, or yearly rent or sum of £——, and all arrears thereof up to and including the day of repurchasing the same, together with a proportional part of the said annuity, or yearly sum, (in case such repurchase shall be made on any other day than one of the said half-yearly days of payment), for the time which shall have elapsed of the then current half of a year, and all and every sums and sum of money, if any, which shall have become payable to him or them in respect of any such additional premium or premiums of insurance as aforesaid, and all and every sums and sum of money, if any, which shall be then due for or on account of any such costs, charges, or expenses as aforesaid, accept and take the sum of £——, of lawful money of the United Kingdom, in full, for the repurchase of the said annuity, yearly rent, or sum of £——, And the said C. D., his executors, administrators, or assigns, and the said E. F. and G. H., their executors, administrators, or assigns, shall and will thereupon, at the request and at the proper costs and charges in the law of the said A. B. or his assigns, release, assign, or otherwise dispose of the said annuity, yearly rent, or sum of £——, and the said hereditaments and premises, and all other securities for the same, unto the said A. B. or his assigns, or unto such other person or persons as he or they shall in that behalf nominate or appoint, and acknowledge, or cause to be acknowledged, satisfaction on the record of the said judgment; And do every or any other act, deed, or thing

FOR SECURING AN ANNUITY FOR THE LIFE OF THE GRANTOR.

necessary or advisable for the avoiding, releasing, assigning, vacating, and discharging the said annuity, yearly rent, or sum of £—— so to be repurchased, and the said several securities given for securing the payment thereof as aforesaid, as by the said A. B. or his assigns, or his or their counsel in the law shall be reasonably devised, or advised and required, so that for the doing thereof the said C. D., his executors, administrators, or assigns, or the said E. F. and G. H., or either of them, their or either of their executors, administrators, or assigns, be not compelled or obliged to go, or travel from his or their usual place or places of abode, and then and in such case, and immediately thereupon the said terms of ninety-eight years and ninety-eight years, determinable respectively as aforesaid, shall respectively cease and determine. IN WITNESS &c.

MEMORIAL

Form of memorial.

MEMORIAL *to be* ENROLLED *in* CHANCERY *of the* ANNUITY *granted in the* LAST PRECEDENT (*l*).

Date of Instrument.	*Nature of Instrument.*	*Names of Parties.*	*Names of Witnesses.*	*Name of the Person by whom Annuity or Rent-charge to be beneficially received.*	*Person for whose Life the Annuity or Rent-charge is granted.*	*Consideration, and how paid.*	*Amount of Annuity or Rent-charge.*
— day of ——, 18—.	Indenture of covenant, grant, and demise.	A. B., of &c., of the 1st part, C. D., of &c., of the 2nd part, and E. F., of &c., and G. H., of &c., of the 3rd part.	W. X., of &c. ——. Y. Z., of &c. ——.	C. D.	A. B.	£—— Paid in notes of the Governor and Company of the Bank of England.	£——.
Same date.	Warrant of attorney to confess judgment in an action of debt.	A. B. to J. K. and L. M., attornies of Court of Queen's Bench.	W. X. Y. Z.	For securing the same annuity, or yearly rent or sum.			

(*l*) See the forms of memorial prescribed by the statute 53 Geo. 3, c. 141, sect. 2; and the declaratory acts, 3 Geo. 4, c. 92, and 7 Geo. 4, c. 75: see, too, ante, Vol. 1, Art. ANNUITY DEEDS.

XXXVIII.

DEED *granting an* ANNUITY *for the* LIVES *and* LIFE *of* THREE *Persons, and of the* LONGEST LIVER *of them, and for securing the same on* COPYHOLDS *of* INHERITANCE (*a*). ON COPYHOLDS.

THIS INDENTURE, made &c., BETWEEN A. B. of &c. [*grantor*], of the one part; and C. D. of &c. [*grantee*], of the other part; WHEREAS the said A. B. hath contracted and agreed with the said C. D. for the absolute sale to him of one annuity, or clear yearly sum of £——, to be paid to the said C. D., his executors, administrators, and assigns, for the lives of X. of &c., Y. of &c., and Z. of &c., and for the lives of the survivors and survivor, or longest liver of them, and to be secured as hereinafter mentioned at or for the price or sum of £——. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B., paid by the said C. D. at or immediately before the sealing and delivery of these presents, (the receipt &c.) He the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he the said A. B., his heirs, executors, or administrators, shall and will pay, or cause to be paid unto the said C. D., his executors, administrators, or assigns, during the lives and life of the said X. Y. and Z., and of the survivors and survivor, or

Parties.

Recital of the contract for the sale of the annuity.

Witnesseth.

Covenant to pay the annuity.

(*a*) The annuity granted by this deed being secured on copyholds of inheritance, comes within one of the exceptions in the statute 53 Geo. 3, c. 141, s. 10, dispensing with the inrolment of a memorial of the deed. The payment of the consideration is accordingly stated in the usual manner, and not as in the last Precedent, supra, p. 330.

It is advisable that the surrender should be made before the consideration is paid, see ante, Vol. 3, p. 304, n. (*a*).

Inrolment not required, the annuity being charged in copyholds of inheritance; —surrender to be made before payment of the consideration.

ON COPYHOLDS.

longest liver of them, an annuity or yearly sum of £——, clear of all deductions and abatements whatsoever, by four equal payments in every year, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the first of such quarterly payments to be made on the —— day of ——, now next ensuing, if the said X. Y. and Z., or any of them shall be then living: AND THIS INDENTURE ALSO WITNESSETH, &c. [*Covenant by A. B. with C. D., his executors and administrators, to surrender Copyholds to the use of C. D., his heirs and assigns, ante, Vol. 3, pp.* 307, 308.] SUBJECT NEVERTHELESS to a condition for making void such surrender on payment by the said A. B., his heirs, executors, or administrators, or any of them, to the said C. D., his executors, administrators, or assigns, of the said annuity or yearly sum of £——, on the days and in the manner hereinbefore mentioned, according to the covenant hereinbefore contained for payment thereof; AND IT IS HEREBY AGREED AND DECLARED, between and by the parties to these presents, that in case default shall be made in payment of the said annuity or yearly sum of £——, or any part thereof, for the space of twenty-one days next over or after any of the several days or times hereinbefore mentioned and appointed for payment thereof, then, and in such case, and thenceforth, he the said C. D., his heirs and assigns shall stand seised of the said hereditaments and premises hereinbefore covenanted to be surrendered as aforesaid, UPON TRUST, that he the said C. D., his heirs or assigns, do and shall, from time to time, by and out of the rents, issues, and profits of the same premises, or any part or parts thereof, or by mortgage or sale thereof, or of any part or parts thereof, or by making distresses upon or by bringing actions against the tenants or occupiers of the same premises for any arrears of rent due in respect thereof; or by all or any of the same ways or means, or by such other ways and means as to him the said C. D., his heirs or assigns shall seem meet, levy and raise such sum and sums of money as shall be sufficient to pay and satisfy unto him the said C. D., his executors, administrators, or assigns, all arrears

Witnesseth, covenant to surrender copyholds subject to a condition for making void the surrender on due payment of the annuity.

Declaration of trusts of the copyholds for securing the annuity;

of the said annuity or yearly sum of £——, and all future payments of the same annuity as the same shall, from time to time, become due and payable; AND ALSO such sum and sums of money, losses, costs, charges, damages, and expenses, (if any) as the said C. D., his heirs, executors, administrators, or assigns, or any of them, shall pay, sustain, expend, or be put unto in obtaining admission to the said copyhold premises, and in executing the trusts hereby declared, or otherwise, by reason or in consequence of the non-payment of the said annuity, or any part thereof, at or on the days, and times, and in the manner hereinbefore mentioned or appointed, for the payment of the same; And shall and do retain, pay, or apply the monies so to be raised for answering the said several purposes accordingly. AND DO AND SHALL pay the residue or surplus (if any) of the rents, issues, and profits of the said premises which shall from time to time remain after answering and providing for the payment of the said annuity and all arrears thereof, and the said costs, charges, and expenses hereinbefore directed to be raised and paid thereout unto the said A. B., his heirs or assigns, for his or their own use and benefit. AND IT IS HEREBY further agreed and declared, between and by the parties to these presents, that subject and without prejudice to the trusts hereinbefore declared thereof, and to any sale, mortgage, or other disposition to be made by virtue thereof, the said C. D., his heirs and assigns, shall stand seised of the said hereditaments and premises hereinbefore covenanted to be surrendered in trust for the said A. B., his heirs and assigns. AND IT IS HEREBY agreed and declared between and by the said parties hereto, that it shall be lawful for the said C. D., his heirs, executors, administrators, and assigns respectively, from time to time after default shall be made in payment of the said annuity as hereinbefore mentioned, to let and manage the said hereditaments and premises, either by demising the same from year to year, or for any term or number of years which the custom of the said manor will admit or otherwise, in such manner as he or they shall think proper. And that all sales, mortgages, leases, and

ON COPYHOLDS.

—and costs;

—with trust of surplus monies for the grantor.

Ultimate trust of the copyholds for the grantor.

Power to the grantee to let and manage the copyholds.

ON COPYHOLDS.

other acts, matters, and things whatsoever which shall be made, done, and executed by the said C. D., his heirs, executors, administrators, or assigns, in pursuance or for the purposes of any of the said trusts hereby declared shall be absolutely conclusive and binding to and upon the said A. B., his heirs and assigns, notwithstanding he or they shall not join or concur therein or consent thereto; AND THAT the receipt of the said C. D., his heirs, executors, administrators, or assigns, shall be an effectual acquittance and discharge for any sum or sums of money, rents, or profits, which shall be paid to him or them pursuant to the trusts hereinbefore declared, and that the purchaser or purchasers, mortgagee or mortgagees, tenant or tenants, or other person or persons making such payment, shall not be answerable or accountable for the loss, misapplication, or nonapplication of the money for which such receipt shall be given, nor shall be concerned to ascertain that any default shall have been made in payment of the said annuity, or otherwise to inquire into the necessity or expediency of making any sale or mortgage, or of any entry upon or demand of rent for the said premises for the purposes aforesaid. AND THAT the said C. D. shall not be answerable or accountable for any more money than he or they respectively shall actually receive under the trusts aforesaid; And by no means for involuntary losses incident to the execution of the same trusts. [*Covenants by A. B. with C. D., his heirs and assigns, for seisin—right to surrender—quiet enjoyment—freedom from incumbrances—and further assurance. See the covenants in a mortgage of copyholds, ante, Vol. 3, p. 567, et seq.*] IN WITNESS &c.

—and give receipts for money paid him.

Indemnity to the grantee.

Covenants for title.

XXXIX.

DEED *granting an* ANNUITY *for the* JOINT LIVES *of a* MAN *and his* WIFE *and the* LIFE *of the Survivor, and securing the same upon the* DIVIDENDS *of* STOCK.

FOR THE JOINT LIVES OF THE GRANTOR AND HIS WIFE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*grantor*], and C. B. his wife, of the one part; and D. E., of &c., [*grantee*], of the other part; WHEREAS, &c.; [*Recital of the settlement on the marriage of A. B. and C. B., whereby it is declared, that trustees shall hold a sum of £3 per Cent. Consolidated Bank Annuities standing in their names, upon trust, for the separate use of the wife for life, and after her death for the husband, (if he survive her), for life, and after the death of the survivor upon the trusts therein mentioned—of the contract for the sale of the annuity, see supra, pp. 330, 347—and of the agreement by the wife to join—the payment of the consideration to the grantor and wife—and the execution by the grantor of a warrant of attorney to confess judgment at the suit of the grantee, supra, p. 330.*] NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration of the said sum of £——, by the said D. E. so paid as hereinbefore is mentioned, (the receipt of which said sum of £——, they the said A. B., and C. B., do hereby acknowledge, and of and from the same and every part thereof do, and each of them doth acquit, release, and discharge the said D. E., his heirs, executors, and administrators, and every of them for ever by these presents), He, the said A. B., doth hereby for himself, his heirs, executors, and administrators, covenant with the said D. E., his executors, administrators, and assigns, that he, the said A. B., his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said

Parties.

Recitals.

Witnesseth.

Receipt of consideration.

Covenant to pay the annuity.

FOR THE JOINT LIVES OF THE GRANTOR AND HIS WIFE.

D. E., his executors, administrators, or assigns, one annuity or clear yearly sum of £——, of lawful money of the United Kingdom, for and during the joint lives of the said A. B. and C. B., and the life of the survivor of them, by four equal payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, without any deduction or abatement whatsoever, for any present or future taxes or impositions, or any other matter, cause, or thing whatsoever, the first quarterly payment of the said annuity of £——, to be made on the —— day of —— next ensuing, if either of them the said A. B. and C. B. shall be then living, and if the survivor of them, the said A. B. and C. B., shall depart this life on any other day than one of the said quarterly days of payment, a proportional part of the said annuity of £——, to be paid to the said D. E., his executors, administrators, or assigns, immediately after the decease of the survivor of the said A. B. and C. B., for the time which such survivor shall have lived of the then current quarter of a year (*a*).

Witnesseth further appointment by the wife to the annuitant;

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the better securing the due and regular payment of the said annuity, and pursuant to and by force and virtue and in exercise and execution of the power and authority to the said C. B. by the hereinbefore recited indenture of settlement given as hereinbefore is mentioned, and of every or any other power or authority in anywise enabling her in this behalf, She the said C. B. doth by this instrument in writing under her hand (*b*) give, direct, and dispose of, unto the said D. E., his executors, adminis-

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(*a*) This clause, as to the proportional part, seems unnecessary, since the statute 4 & 5 Will. 4, c. 22.

Mode of assigning dividends settled for the separate use of a married woman.

(*b*) The settlement in creating the estate for the separate use gave the wife a power of appointment preceding the proper trust for her separate use (see ante, Vol. 4, p. 316), and therefore rendered necessary a formal appointment. If the trust had been merely for the separate use of the wife, her assignment in the same manner as if she were a feme sole would have sufficed.

FOR THE JOINT LIVES OF THE GRANTOR AND HIS WIFE.

trators, and assigns, ALL the dividends, interest, and annual proceeds, which henceforth during the life of the said C. B. shall grow due or payable for or in respect of the said sum of £——, £3 per cent. Consolidated Bank Annuities, or for or in respect of any sum or sums of money, stocks, funds, or securities, which shall be produced by any sale, transfer, or other disposition, which in pursuance of the said trust or power in that behalf contained in the said indenture of settlement shall be made of the said sum of £——, £3 per cent. Consolidated Bank Annuities, or any part thereof, or upon which the money arising from any such sale, transfer, or disposition, or any part thereof, shall, at any time or times during the lives of the said A. B. and C. B., and the life of the survivor of them, be laid out or invested NEVERTHELESS upon and for the trusts, intents, and purposes hereinafter expressed, declared, and contained of or concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the considerations aforesaid, and for further securing the payment of the said annuity, they the said A. B. and C. B., do and each of them doth by these presents assign unto the said D. E., his executors, administrators, and assigns, ALL the dividends, interest, and annual produce, which henceforth during the lives of the said A. B. and C. B., and the life of the survivor of them, shall become due or payable for or in respect of the said sum of £——, £3 per cent. Consolidated Bank Annuities, or for or in respect of any sum or sums of money, stocks, funds, or securities, which shall be produced by any sale, transfer, or other disposition, which, in pursuance of the trust or power in that behalf contained in the said indenture of settlement, shall be made of the said sum of £——, £3 per cent. Consolidated Bank Annuities, or any part thereof, or upon which the money arising from any such sale, transfer, or disposition, or any part thereof, shall at any time or times during the lives of the said A. B. and C. B., or the life of the survivor of them, be laid out or invested, AND ALL THE ESTATE, &c., TO HAVE, HOLD, RECEIVE, AND TAKE the said dividends, interest, and annual

—of stock dividends settled to the separate use for life of the wife.

Upon trusts.

Witnesseth further assignment by the husband and wife to the annuitant.

—of the same dividends in which the wife and husband have successive life interests.

Habendum.

FOR THE JOINT LIVES OF THE GRANTOR AND HIS WIFE.

produce, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said D. E., his executors, administrators, and assigns, NEVERTHELESS upon and for the trusts, intents, and purposes hereinafter expressed, declared, and contained, of or concerning the same; AND IT IS HEREBY AGREED AND DECLARED, between and by the parties to these presents, that the said D. E., his executors, administrators, and assigns, shall stand and be possessed of and interested in the said dividends, interest, and annual produce hereinbefore appointed and assigned, or expressed and intended so to be, upon and for the trusts, intents, and purposes hereinafter expressed, declared, and contained of or concerning the same, (that is to say), UPON TRUST, that he, the said D. E., his executors, administrators, and assigns, do and shall, from time to time, during the lives of the said A. B. and C. B., and the life of the survivor of them, by and out of the said dividends, interest, and annual produce, retain and pay to himself, his executors, administrators, and assigns, the said annuity or yearly sum of £——, as and when the same shall become due or payable according to the covenant hereinbefore contained for the payment thereof: AND ALSO do and shall, by and out of the same dividends, interest, and annual produce, when and as the same shall become due and payable, retain to himself and themselves, all such costs, charges, and expenses, as he or they shall sustain or be put to by reason of the non-payment of the said annuity or yearly sum of £——, or in or about the execution of the trusts hereby declared; AND DO AND SHALL pay and apply all the surplus or residue which shall from time to time remain of the said dividends, interest, and annual produce, after satisfying and discharging the said annuity of £——, and such costs, charges, and expenses as aforesaid in such and the same manner as the same would have been payable or applicable under the said indenture of settlement, in case these presents had not been executed. [*Covenant by A. B. for the right of himself and C. B. respectively, to appoint and assign, and for further assurance. See ante, Vol. 4, p. 372, et seq.*]: AND ALSO, that

Upon trusts.

Declaration of trusts of the dividends.

To pay the annuity;

—and costs.

—and the surplus according to the settlement.

Covenants for title;

—and to do all

FOR THE JOINT LIVES OF THE GRANTOR AND HIS WIFE.

they the said A. B. and C. B., and each of them, shall and will at any time or times hereafter, at the request and desire of the said D. E., his executors, administrators, or assigns, appear in person so often as there may be occasion for so doing, (upon having proper notice thereof), at any office or place of insurance within the cities of London or Westminster, or send the said D. E., his executors, administrators, or assigns, notice of their, his, or her place of abode, and such vouchers as the office may require respecting their, his, or her state of health from time to time, in order that the said D. E., his executors, administrators, or assigns, (if he or they shall think fit), may insure the life of the longer liver of them the said A. B. and C. B., for any sum or sums of money not exceeding the sum of £——; And also, that they the said A. B. and C. B., respectively, shall not, nor will at any time hereafter, depart and leave this kingdom, or go and travel upon the seas, or reside in foreign parts, without giving every time one month's notice in writing to the said D. E., his executors, administrators, or assigns, to make known the same at the office or offices where the life of the longer liver of them the said A. B. and C. B., shall or may be insured, that the additional premium or premiums to be thereby incurred, from time to time, for the purpose of keeping on foot any policy or policies of insurance effected or to be effected by the said D. E., his executors, administrators, or assigns, on the life of the longer liver of them the said A. B. and C. B., for any sum or sums of money not exceeding the sum of £—— as aforesaid, may be paid unto the office or offices where such life may for the time being be so insured: AND FURTHER, that he the said A. B., his heirs, executors, or administrators, shall and will, from time to time, and at all times hereafter, well and truly pay, or cause to be paid unto the said D. E., his executors, administrators, or assigns, all such additional premium or premiums of insurance as the said D. E., his executors, administrators, or assigns, shall or may pay unto the said office or offices in respect of the matters last aforesaid, within the space of seven days after every or any such payment shall

acts necessary for enabling assurances to be effectuated;

—and to repay additional or extra premiums which may become payable.

FOR THE JOINT LIVES OF THE GRANTOR AND HIS WIFE.

be made as aforesaid; and that in default of payment thereof accordingly, it shall be lawful for the said D. E., his executors, administrators, or assigns, to retain the same, and all costs, charges, and expenses to be occasioned by the non-payment thereof out of the dividends, interest, and annual produce hereby assigned or expressed and intended so to be, or any part thereof in such and the same manner as hereinbefore provided as to the said annuity of £—— (*c*): AND THIS INDENTURE ALSO WITNESSETH &c. [*declaration of trust of the judgment to be entered up, supra, p.* 341, *et seq., the receipts of D. E., his executors, administrators, and assigns, to be discharges, ante, Vol.* 3, *p.* 616]: AND THIS INDENTURE LASTLY WITNESSETH, and the said D. E. doth hereby for himself, his executors and administrators, covenant with the said A. B., his executors and administrators, that in case the said A. B. and C. B., or the survivor of them, shall at any time hereafter be minded or desirous of repurchasing the said annuity of £——, and of such their, his, or her intention, shall give seven days' notice in writing unto the said D. E., his executors, administrators, or assigns; then and in such case he the said D. E., his executors, administrators, and assigns, shall and will, upon the expiration of the said seven days, for which such previous notice shall be so given as aforesaid, on receiving of and from the said A. B. and C. B., or the survivor of them, full payment of the said annuity of £——, and all arrears thereof up to and including the day of repurchasing the same, together with a proportional part of the same annuity, (in case such repurchase shall be made on any other day than one of the said quarterly days of payment), from the time which shall have elapsed from the last preceding quarterly day of payment up to and including the day of such repurchase; And all and every sum and sums of money (if any) which shall be then due for or on account of any costs, charges, or expenses occasioned by the non-payment thereof, accept, and take the transfer into the name of him the said D. E., his executors, administrators, or

Witnesseth declaration of trust of a judgment.

Witnesseth further provision for the repurchase of the annuity.

(*c*) See supra, p. 341, n. (*i*).

FOR THE JOINT LIVES OF THE GRANTOR AND HIS WIFE.

assigns, in the books of the Governor and Company of the Bank of England, of the sum of £——, £3 per cent. Consolidated Bank Annuities, being the amount of the stock which hath this day been sold by the said D. E. for raising the said sum of £—— hereinbefore mentioned to have been paid to the said A. B., together with £——, being the amount of one quarterly payment of the said annuity of £—— in full, for the repurchase of the said annuity or yearly sum of £——; And the said D. E., his executors, administrators, or assigns, will thereupon at the request and at the proper costs and charges in the law of the said A. B. and C. B., or the survivor of them, release, assign, or otherwise dispose of the same annuity, and all the securities for the same as the said A. B., and C. B., or the survivor of them, shall in that behalf direct or appoint. IN WITNESS &c.

XL.

WARRANT *of* ATTORNEY *to confess Judgment as a Collateral Security for an Annuity* (*a*).

WARRANT OF ATTORNEY.

TO E. F., of &c., and G. H., of &c., attornies of her Majesty's Court of Queen's Bench at Westminster, jointly and severally, or to any other attorney of the same court.

Recital of agreement for the sale of the annuity, and for the security by charge and judgments;

WHEREAS the undersigned A. B., of &c., hath contracted and agreed with C. D., of &c., for the sale to him at or for the price or sum of £——, of an annuity of £——, to be paid to him the said C. D., his executors, administrators, and assigns, for the term of —— years, if the said C. D., and E. D., his wife, and F. D., his son, or any of them, shall so long live, and to be secured not only upon all and

(*a*) A judgment is a very usual collateral security for an annuity. See supra, p. 331, n. (*b*), and the declaration of trust, p. 341.

WARRANT OF ATTORNEY.

singular the lands and hereditaments charged therewith by the indenture hereunder mentioned, but also by the warrant of attorney of the said A. B., and a judgment to be entered up in pursuance thereof in her Majesty's Court of Queen's Bench at Westminster, as of —— term then last or some subsequent term in an action against him the said A. B. at the suit of the said C. D. for the sum of £——, for money borrowed and costs of suit. AND WHEREAS the said A. B., in pursuance of the said agreement, and in consideration of the sum of £—— of lawful money of the United Kingdom to him in hand paid by the said C. D. at the time of the sealing and delivery of the said indenture and of these presents, hath by an indenture, bearing even date herewith, given, granted, sold, and confirmed unto the said C. D., his executors, administrators, and assigns, one annuity or clear yearly sum of £—— of lawful money of the United Kingdom, to be paid and payable for and during the term of —— years if the said C. D., E. D., and F. D., or any of them shall so long live, and to be charged and chargeable upon and yearly issuing and payable out of the several messuages, lands, tenements, and hereditaments therein mentioned, and their appurtenances, To hold, receive, take and enjoy the said annuity or yearly rent or sum unto the said C. D., his executors, administrators, and assigns, thenceforth for and during the term of —— years if the said C. D., E. D., and F. D., or any of them shall so long live, and to be paid and payable at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by equal quarterly payments (that is to say), on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, without any deduction or abatement whatsoever, the first quarterly payment of the said annuity to be made on the —— day of —— next ensuing the day of the date of the said indenture and of these presents, if the said C. D., E. D., and F. D., or any of them shall be then living; And also with a proportional part of the said annuity for so many days as the survivor of them, the said C. D., E. D., and F. D., departing this life during any current quarter of a year shall have

—of the indenture of even date effectuating the charge.

lived of that quarter of a year (*b*). And by the said indenture it is declared that the judgment intended to be entered up in pursuance of these presents, is intended and agreed to be a further security to the said C. D., his executors, administrators, and assigns, for the said annuity of £——, and that no execution or executions shall be issued or taken out upon the said judgment unless and until the same annuity or some part thereof shall be in arrear by the space of —— days; And the said C. D., his executors, administrators, and assigns, is and are thereby authorized when and so often as the same annuity or any part thereof shall be so in arrear for —— days, to sue out such execution or executions upon the said judgment for the recovery of the arrears of the said annuity; and all costs, charges, and expenses, if any, which he or they shall sustain or be put unto by reason of the non-payment thereof, as he or they shall think fit; And by the said indenture the said annuity is made repurchaseable by the said A. B., his heirs, executors, or administrators, at any time previous to the —— day of —— which will be in the year ——, on payment of the sum of £——, and all arrears of the said annuity, and all costs, charges, and expenses occasioned by the non-payment thereof. NOW THEREFORE these are in pursuance of the above-mentioned agreement, and for the further securing the said annuity or yearly sum of £——, to desire and authorize you the attornies above-named, or any one of you, or any other attorney of the Court of Queen's Bench aforesaid, to appear for the said A. B. as of —— term last or some subsequent term, and then and there receive a declaration for the said A. B., on an action for £—— for money borrowed at the suit of the said C. D., and thereupon to confess the said action, or else to suffer judgment by not informed or otherwise to pass against the said A. B. in the said action, and to be thereupon forthwith entered up against him of record of the same court for the sum of £—— and costs of suit.

WARRANT OF ATTORNEY.

Power of attorney to confess judgment.

(*b*) See supra, p. 332, n. (*c*).

WARRANT OF ATTORNEY.

And the said A. B. doth hereby authorize and empower you, the said attornies, or any of you, after the said judgment shall be entered up as aforesaid, for him the said A. B., and in his name and as his act and deed, to sign, seal, and execute a good and sufficient release in the law to the said C. D., his heirs, executors, and administrators, of all and all manner of error and errors, writ and writs of error and errors, and all benefit and advantage thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, or to be had, made, committed, done, or suffered in, about, touching, or concerning the aforesaid judgment, or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceeding whatsoever, of or in anywise concerning the same, and for what you, the said attornies, or any of you, shall do or cause to be done in the premises, this shall be to you a sufficient warrant and authority; And it is hereby declared, that the judgment so to be entered up, is to be a further security for the payment of the said annuity of £—— in such manner as in the said indenture is expressed. IN WITNESS &c.

XLI.

BOND.

BOND *for securing an* ANNUITY *to a* MAN *for* LIFE, *and then to his* WIFE *for* LIFE, *if she survive him, with* PROVISION *for the* REPURCHASE *of the Annuity.*

Bond.

KNOW ALL MEN, by these presents, that I, A. B., of &c. [*obligor, the grantor of the annuity*], am held and firmly bound to C. D., of &c. [*obligee, the grantee of the annuity*], in the sum of £—— [*double the purchase-money*] of lawful money of the United Kingdom, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns, for which payment to be well and truly

BOND.

made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with my seal. Dated this —— day of ——, in the year of our Lord one thousand eight hundred and ——.

Recital of agreement for sale of the annuity;

WHEREAS the above-named A. B. hath contracted and agreed with the said C. D. for the absolute sale to him of one annuity, or clear yearly sum of £——, to be paid to the said C. D. during his life, and after his death to E. D. his wife, if she shall survive him, during her life, at or for the price or sum of £——, and to be secured by the bond or obligation in writing of the said A. B. in the above-mentioned penal sum of £——, subject to the condition hereunder written for making void the same: AND WHEREAS, in pursuance of the said agreement, the said A. B. hath on the day of the date of the above-written bond or obligation, paid the sum of £——, of lawful money of the United Kingdom, in notes of the Governor and Company of the Bank of England to the said A. B. (*a*): AND WHEREAS it was agreed, that the said A. B., his heirs, executors, or administrators, should be at liberty to repurchase the said annuity upon the terms and conditions hereunder mentioned. NOW THE CONDITION of the above-written bond or obligation is such, that, if the above-bounden A. B., his heirs, executors, or administrators, or some or one of them, shall and do pay or cause to be paid unto the said C. D. and his assigns during his life, and after his decease unto the said E. D. (in case she shall survive him), and her assigns during her life, one annuity or clear yearly sum of £—— of lawful money of the United Kingdom, by two equal payments, on the —— day of ——, and the —— day of —— in every year, at or in the common dining-hall of the Inner Temple, London, between the hours of twelve and two of the clock in the day-time, without any deduction or abatement whatsoever, for or on account of any present or future taxes, charges, rates, assessments, or impositions, by authority of parliament, or otherwise how-

—of the payment of the consideration;

—of the agreement for repurchase.

Condition for payment of the annuity;

(*a*) See supra, p. 330, n. (*a*).

BOND.

soever, or any other matter, cause, or thing whatsoever; and do and shall make the first half-yearly payment of the said annuity or yearly sum of £—— on the —— day of —— next ensuing the date of the above-written bond or obligation, if either of them the said C. D. and E. D. his wife shall be then living; OR IF THE SAID A. B., his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid the said annuity or yearly sum of £——, in the proportions, on or at the days or times, and in the manner hereinbefore mentioned or appointed for payment of the same, in the mean time and until such payment as hereunder is mentioned shall be made for the repurchase of the said annuity or yearly sum of £——; and do and shall at any time after the expiration of —— years from the date of the above-written bond or obligation, pay or cause to be paid unto the said C. D., in case he shall then be living, or unto the said E. D. in case she shall then have survived him, the sum of £—— of lawful money of the United Kingdom, (six calendar months' notice of such payment having been previously given, or the sum of £——, being one-half year's payment of the said annuity, being at the same time paid in lieu of such notice), as and for the repurchase of the said annuity or yearly sum of £——; and also at the same time well and truly pay or cause to be paid to the said C. D., in case he shall then be living, or unto the said E. D., in case she shall then have survived him, a proportional part of the said annuity or yearly sum of £—— for the time (if any) which shall have elapsed of the current half-year; Then and in either of such cases the above-written bond or obligation shall be void, otherwise to remain in full force and virtue. IN WITNESS &c.

—and for repurchase on certain terms.

XLII.

BOND *by* TWO *Persons entering upon a* BUSINESS *to secure an* ANNUITY *to the Person retiring.*

BOND TO SECURE ABSOLUTE ANNUITY.

KNOW ALL MEN, by these presents, that we, C. D., of &c., and E. F., of &c. [*obligors*], are held and firmly bound to A. B., of &c. [*obligee*], in the sum of £—— [*double the estimated value of the annuity*] of lawful money of the United Kingdom, to be paid to the said A. B., or to his certain attorney, executors, administrators, or assigns, for which payment, to be well and truly made, we bind ourselves, and each of us, our, and each of our heirs, executors, and administrators, and every of them, jointly and severally, firmly by these presents. Sealed with our seals. Dated this —— day of ——, in the year of our Lord one thousand eight hundred and ——.

Bond.

WHEREAS the above-named A. B. hath heretofore carried on the business or trade of a —— at —— aforesaid, and at several other places: AND WHEREAS it hath been agreed that the said A. B. should retire from the said business or trade, and that the above-bounden C. D. and E. F. should enter and carry on the same business or trade upon their own account as co-partners: AND WHEREAS, upon the treaty for the retirement of the said A. B., it was agreed (among other things) that the said C. D. and E. F. should, by their joint and several bond or obligation in writing in the above-mentioned penalty, secure to the said A. B. a clear annuity of £—— during his life in manner hereunder mentioned. NOW THE CONDITION of the above-written bond or obligation is such, that, if the said C. D. and E. F., or either of them, their, or either of their heirs, executors, or administrators, or any of them, shall pay or cause to be paid, unto the said A. B., or his

Recitals of the annuitant having carried on business, and having agreed to retire in favour of two other persons;

—and that they should secure him an annuity by bond.

Condition.

BOND TO SECURE ABSOLUTE ANNUITY.

assigns, during his life, an annuity or clear yearly sum of £——, by equal half-yearly payments, on the —— day of ——, and the —— day of —— in every year, without any deduction or abatement whatsoever; and shall make the first half-yearly payment of the said annuity on the —— day of —— next ensuing, if the said A. B. shall be then living, then the above-written bond or obligation shall be void, otherwise to remain in full force and virtue.

XLIII.

RELEASE OF ANNUITY.

RELEASE *of an* ANNUITY *upon the* REPURCHASE *thereof.* SURRENDER *of a* TERM *of Years in Freehold, and* RE-ASSIGNMENT *of* LEASEHOLDS *which had been respectively demised and assigned for securing the Annuity.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B. and C. D., both of &c., [*grantees of the annuity*], of the first part; E. F., of &c., [*trustee*], of the second part; and G. H., of &c., [*grantor of the annuity*], of the third part: WHEREAS by an indenture, bearing date the —— day of ——, and made or expressed to be made between the said G. H. of the first part, the said A. B. and C. D. of the second part, and the said E. F. of the third part; After reciting, that, [*recital of leases for lives and years to G. H.*], It was witnessed, that In consideration of £—— to the said G. H. paid by the said A. B. and C. D., the said G. H. did grant, bargain, sell, and confirm unto the said A. B. and C. D., their executors, administrators, and assigns, for the lives and life of the said A. B. and C. D., and ——, and the survivors and survivor of them, one annuity, clear yearly rent-charge, or annual sum of £——, to be yearly issuing, and payable to, and had, received, and taken by the said A. B. and C. D., their executors, administrators, and assigns, by and out of ALL THAT, &c.,

Recital of the annuity deed;

RELEASE OF ANNUITY.

[*freehold and leasehold parcels verbatim*], and by and out of their rights, members, easements and appurtenances, To hold the same unto the said A. B. and C. D. as tenants in common, and their respective executors, administrators, and assigns, for the lives and life of the said A. B., C. D., and ——, and the survivors and survivor of them, to be paid and payable as therein mentioned, with the usual powers and remedies of distress and entry for enforcing the payment of the same annuity or yearly rent-charge when in arrear: And by the said indenture now in recital for better securing the payment of the said annuity or yearly rent-charge, and for a nominal consideration, the said G. H., at the request and by the direction and appointment of the said A. B. and C. D., (testified as therein mentioned), did grant, bargain, sell, and demise unto the said E. F., his executors, administrators, and assigns, the said freehold hereditaments and premises thereinbefore respectively described, and thereby charged with the payment of the said annuity or yearly rent-charge of £——, or expressed and intended so to be, To hold the same unto the said E. F., his executors, administrators, and assigns, from the day of the date of the said indenture now in recital for the term of —— years, subject nevertheless, as to such of the said freehold hereditaments and premises held for lives as aforesaid, to the sooner determination of the estates for which the same was then held by the deaths of the several cestuis que vie respectively; And by the said indenture now in recital, the said G. H., at the like request, direction, and appointment of the said A. B. and C. D., (testified as aforesaid), did assign unto the said E. F., his executors, administrators, and assigns, the said premises holden under leases for years thereinbefore and hereinbefore mentioned, and thereby charged with the payment of the said annuity or yearly rent-charge, or expressed and intended so to be, To hold the same unto the said E. F., his executors, administrators, and assigns, for the residue then to come of the several terms of years in and by the said indentures of lease granted thereof respectively, and for all other the estates, terms, and interests of the said G. H. therein respec-

RELEASE OF ANNUITY.

tively, subject nevertheless to the several rents, covenants, provisoes, and agreements, in and by the same indentures of lease reserved and contained; And it was by the indenture now in recital agreed and declared, that the said E. F., his executors, administrators, and assigns, should stand and be possessed of and interested in the said premises thereinbefore demised and assigned respectively upon the trusts therein declared for further and better securing the payment of the said annuity or yearly rent-charge of £——; and in the said indenture now in recital was contained a power for the said G. H. to re-purchase the said annuity or yearly rent-charge of £——, at any time after he expiration of the first five years, for the sum of £——, on giving six calendar months' notice in writing of his intention in that behalf, and on payment of all arrears of the same annuity or yearly rent-charge, and all costs and expenses (if any) which should have been occasioned by the non-payment thereof: AND WHEREAS all arrears of the said annuity or yearly rent-charge of £——, including a proportional part of the same annuity or yearly rent-charge for the time which hath elapsed of the current quarter up to the day of the date of these presents, have been paid by the said G. H. to the said A. B. and C. D.: AND WHEREAS the said A. B. and C. D. have agreed with the said G. H. to accept the sum of £—— for the immediate repurchase of the said annuity or yearly rent-charge of £——. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. and C. D. paid by the said G. H. at or immediately before the sealing and delivery of these presents (the receipt, &c.), they the said A. B. and C. D. do, and each of them doth, by these presents remise, release, and for ever quit-claim unto the said G. H., his heirs, executors, administrators, and assigns, ALL AND SINGULAR the said hereditaments and premises by the said indenture of the —— day of —— charged or expressed to be charged with the payment of the said annuity or yearly rent-charge of £——, freed and absolutely discharged from the same annuity, and all arrears and future payments

—that all arrears of the annuity have been paid;

—agreement for repurchase of the annuity;

Witnesseth release of the annuity as to the

Parcels;

thereof, and all powers and remedies for enforcing the payment of the same; AND DO, and each of them doth, by these presents acquit, release, and discharge the said G. H., his heirs, executors, and administrators, and every of them, of and from the said covenant entered into by the said G. H., in and by the said indenture of the —— day of ——, for payment of the said annuity and yearly rent-charge, and of and from all other the securities whatsoever for the same, and all actions, suits, claims, or demands for or in respect of the same annuity or yearly rent-charge, or in anywise relating thereto; AND EACH OF THEM THE SAID A. B. and C. D., so far as relates to his own acts and deeds, doth hereby for himself, his heirs, executors, and administrators, covenant with the said G. H., his heirs, executors, and administrators, that they the said A. B. and C. D. respectively have not, at any time heretofore, made, done, committed or executed, or knowingly or willingly permitted or suffered, or been party or privy to any act, deed, matter or thing whatsoever, whereby or by reason or means whereof they the said A. B. and C. D. respectively are in anywise prevented or hindered from releasing the said annuity or yearly rent-charge, or annual sum of £——, and other the premises hereinbefore released or expressed, and intended so to be in manner aforesaid, according to the true intent and meaning of these presents. AND THIS INDENTURE ALSO WITNESSETH, that, for the considerations aforesaid, he the said E. F., at the request and by the direction of the said A. B. and C. D., and upon the acceptance of the said G. H. (testified by his being a party to and executing these presents), doth by these presents surrender unto the said G. H. the said messuages, lands, and hereditaments, and all and singular other the premises comprised in the said term of —— years, granted by the said indenture of the —— day of ——, as hereinbefore is mentioned; AND ALL THE ESTATE, &c.; TO THE END and intent that the residue now to come of the same term of —— years may absolutely merge and be extinguished in the reversion, freehold, or inheritance of the same premises. AND THIS INDENTURE ALSO WITNESSETH,

RELEASE OF ANNUITY.

—and the grantor.

Covenants by the annuitants against incumbrances.

Witnesseth surrender to the grantor of a term of years in freeholds.

To merge.

Witnesseth fur-

RELEASE OF ANNUITY.

ther re-assignment to the grantor of leaseholds.

that, for the considerations aforesaid, he the said E. F., at the like request, and by the like direction of the said A. B. and C. D., and so testified as hereinbefore is mentioned, doth by these presents assign unto the said G. H., his executors, administrators, and assigns, ALL AND SINGULAR the said leasehold premises assigned or expressed to be assigned by the said indenture of the —— day of ——, as hereinbefore is mentioned, with their rights, easements, and appurtenances; AND ALL THE ESTATE, &c.; TO HAVE AND TO HOLD all and singular the premises hereinbefore assigned or expressed and intended so to be, unto the said G. H., his executors, administrators, and assigns, for all the residue now to come of the said terms of years granted thereof respectively, as in the said indenture of the —— day of —— and hereinbefore is mentioned; And for all other the estates, terms, and interests of the said E. F. in the same premises respectively, SUBJECT nevertheless to the payment of the several rents, and the observance and performance of the several covenants, conditions, and agreements, in and by the several indentures of lease thereof respectively reserved and contained, and on the part of the several lessees, their respective executors, administrators, or assigns, to be paid, observed, and performed. [*Covenant by E. F. with G. H., his heirs, executors, administrators, and assigns respectively, against incumbrances. See ante, Vol. 3, p.* 654.] IN WITNESS &c.

Habendum to the grantor.

Covenant.

COPARTNERSHIP DEEDS.

General observations on the essential provisions of copartnership deeds.

IN preparing Copartnership Deeds, the principal points to which the draftsman must attend, are—to specify distinctly the intended trade or business—the period at which the copartnership is to commence—the term for which it is to endure, and the events on which it is to be, or may be sooner determined—what the capital is to consist of, and how it is to be brought in—the proportions in which the copartners are to bear the losses, and share the profits—the manner and time in and at which the general accounts are to be taken—whether all the partners, and if not, which of them are to attend to the business—and whether the partners who are not to be bound to attend the business are to be at liberty to do so if they please, or are to be absolutely excluded from interference. It is also necessary to provide distinctly for winding up the partnership affairs on the dissolution by efflux of time, or upon any earlier determination; and to make arrangements, either for winding up or carrying on the business, upon the death of any or all of the partners during the continuance of the copartnership. The following Precedents will afford examples of the most usual provisions in regard to the foregoing points, but there are very few partnership deeds which do not contain special provisions.

Method of preparing partnership deeds from deficient instructions.

It should be observed, that the instructions given by parties themselves for partnership deeds are never complete, and that they very often come before counsel in the same state. The best way is, not to request further information, but to draw the deed from the instructions so far as they go, and to supply from precedents, or one's own judgment, such further provisions (accompanied with marginal queries as to the intentions), as may be necessary, and will be in harmony with those framed from the instructions; for the perusal of these provisions and of the accompanying queries, will suggest to the parties what further they have to determine, better than mere questions unaccompanied by a draft, and will often induce them to accede to the draftsman's provisions on points of which they had not previously thought.

Law of partnership.

With respect to the law of partnership, the works of Gow and Collyer may be consulted, and some observations on it, so far as it bears on the construction of partnership deeds, will be found ante, Vol. I., art. COPARTNERSHIP DEEDS, and in the notes on the subsequent Precedents.

XLIV.

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

ARTICLES *of* COPARTNERSHIP *between Four* ACTIVE *Partners and* ONE SLEEPING *Partner.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., of the first part; C. D., of &c., of the second part; E. F., of &c., of the third part; G. H., of &c., of the fourth part; and I. K., of &c., [*the sleeping partner*], of the fifth part.

Witnesseth mutual covenants by the intended copartners.

WITNESSETH, that in consideration of the mutual trust and confidence which they, the said A. B., C. D., E. F., G. H., and I. K., have and repose in each other, each of them, the said A. B., C. D., E. F., G. H., and I. K., (so far as the covenants and agreements hereinafter contained are to be observed or performed by him, his heirs, executors, or administrators), doth for himself, his heirs, executors, and administrators, covenant with the others of them, their executors and administrators, and also with each of the others of them, his executors and administrators, by these presents in manner following; (that is to say),—

To become and remain copartners.

I. THAT they, the said A. B., C. D., E. F., G. H., and I. K., shall and will become, be, and remain copartners, and joint traders in the trade or business of —— (*a*).

Term of copartnership.

II. THAT the said copartnership shall commence on the —— day of this present month of —— (*b*), and shall continue for the term of twenty-one years thence next ensuing,

---

Business of partnership to be specified.

(*a*) The business of a partnership cannot be altered, or its capital employed for any purpose other than those of the business specified in the articles, without the unanimous consent of the partners. *Natusch* v. *Irving*, Gow. Partn. Append. 407; Collyer on Partn. 140, 2nd Edit. Hence, the necessity of specifying distinctly what is to be the business or branch of business carried on by an intended partnership.

Time of commencement of partnership.

(*b*) If no time be specified for the commencement of the partnership, it will begin from the date of the articles; but, of course, this is never left undetermined in regular articles. *Williams* v. *Jones*, 5 B. & C. 108.

if the said A. B., C. D., E. F., G. H., and I. K., or any of them, shall so long live (*c*).

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

III. THAT if, nevertheless, before the end of seven years, to be computed from the —— day of this present month of ——, or before the end of fourteen years, to be computed from the same —— day of ——, any one or more of them the said A. B., C. D., E. F., G. H., and I. K., shall be desirous that the said copartnership shall cease and determine, and of such his or their desire shall give not less than six calendar months' previous notice in writing to the others or other of them, or shall leave such notice at the place where the said trade or business shall for the time being be carried on, Then and in such case immediately upon the end of the said seven years, or the said fourteen years, as the case may be, the said copartnership shall absolutely cease and determine.

Proviso for determination of the copartnership at the end of the first seven or fourteen years.

IV. THAT the firm and style of the said copartnership or house of trade shall be —— (*d*).

Firm and Style.

V. THAT the trade or business of the said copartnership shall be carried on in —— aforesaid, or in such other place or places as the said copartners shall hereafter determine.

Place of business.

VI. THAT the trade and business of the said copartnership shall be wholly carried on, managed, and conducted by the said A. B., C. D., E. F., and G. H., and that they the said A. B., C. D., E. F., and G. H., shall and will at all times during the continuance of the said copartnership diligently and faithfully employ themselves in and about the

Business to be carried on by certain partners who are to attend to the management thereof.

(*c*) The instructions for partnership deeds are often deficient from not stating whether the term is to be absolute, or determinable on the death of all or any of the partners. The point must, however, never be left undetermined in the deed itself. In the absence of any stipulation on the subject, a partnership, either for an indefinite period or a fixed term, will be dissolved by the death of any of the partners. *Crawford* v. *Hamilton*, 3 Madd. 254; 1 Swanst. 508; Colly. on Partn., pp. 74, 140; 2d Edit.

Term of partnership, whether absolute or determinable by death.

(*d*) It is convenient and usual, although not essential, to determine by the articles the firm under which the partnership is to carry on business; and if it be so determined, it is a breach of covenant for any partner to sign on behalf of the partnership by any other signature than that of the firm mentioned in the articles. Colly. on Partn. 141, 2nd Edit.

Firm of partnership.

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

trade and business of the said copartnership, and carry on, manage, and conduct the same for the greatest benefit and advantage of the said copartnership, but shall not be entitled to any allowance or remuneration for their care or trouble in so carrying on, managing, and conducting the same.

Partners to be mutually just, and to render accounts when required to each other;

VII. THAT each of them, the said A. B., C. D., E. F., and G. H., shall and will be just and faithful to the others of them, and to the said copartnership, in all buyings, sellings, accounts, reckonings, receipts, payments, dealings, and transactions, in and about the trade or business of the said copartnership, and shall and will give, make, and render to the others and other of them, and to the said I. K., a just and faithful account thereof when and so often as the same shall be reasonably required (*e*).

—and to give each other all necessary information on partnership matters.

VIII. THAT each of them, the said A. B., C. D., E. F., and G. H., shall and will, at all times during the continuance of the said copartnership, upon any reasonable request of the others or other of them, inform the others and other of them of all such letters, accounts, writings, and other things, as shall or may come into his hands or knowledge in anywise touching or concerning the trade or business of the said copartnership (*e*).

None of the active partners to be engaged in any other business;

IX. THAT none of them, the said A. B., C. D., E. F., and G. H., (except the said A. B., in respect of the —— business at ——, wherein he is now concerned), shall or will, either by himself or with any other person or persons whomsoever, directly or indirectly engage in any trade, manufacture, or business, except upon the account and for the benefit and advantage of the said copartnership (*f*).

(*e*) The clauses 7 & 8 express little, if any thing, more than the law of partnership implies, and may be omitted if brevity is an object.

Covenant by partners not to carry on, on their own account, the same business as the partnership.

(*f*) This covenant is very commonly limited to the particular business of the partnership, (see the *Universities of Oxford and Cambridge* v. *Richardson*, 6 Ves. 706; *Morris* v. *Colman*, 18 Ves. 438), leaving the partners at liberty to enter into any other business. Thus, a covenant by the proprietor of a morning newspaper, not to be engaged in any other morning paper, leaves him at liberty to engage in an evening paper. *Glassington* v. *Thwaites*, 1 Sim. & Stu. 132; Colly. on Partn. 142, 143, 2nd Ed.

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

X. THAT none of them, the said A. B., C. D., E. F., and G. H., shall take any apprentice, or hire or dismiss any clerk, traveller, workman, or servant, in the trade or business of the said copartnership, without the consent or desire of the others or other of them.

—or to hire or dismiss any servant without mutual consent;

XI. THAT none of them, the said A. B., C. D., E. F., and G. H., shall, at any time during the continuance of the said copartnership, take or go any journey or journeys, voyage or voyages, for or on account of the said trade or business of the said copartnership, or otherwise, without the consent of the others, or other of them; and that if any of them shall at any time or times, during the continuance of the said copartnership, take or go any such journey or journeys, voyage or voyages, without such consent as aforesaid, he or they shall for such time as he or they shall be upon any such journey or journeys, or voyage or voyages, forfeit a proportional part of his or their share or respective shares in the gains and profits of the said copartnership, or the sum of £——, at the option of the other partner or partners (*g*).

—or go any journey on account of the copartnership, without mutual consent.

The sleeping partner not to interfere in the business, nor carry on the same business elsewhere, nor use the name of the firm.

XII. THAT the said I. K. shall not nor will interfere in the carrying on, management, or conduct of the said trade or business of the said copartnership; and shall not nor will, during the continuance of the said copartnership, by himself, or with any person or persons whomsoever, (other than the said A. B., C. D., E. F., and G. H.,) be either directly or indirectly concerned in the trade or business of a ——; and shall not, nor will on any occasion (other than is authorized by these presents), use the firm or name of the said copartnership, or sign his name as a partner therein, except upon the request or with the consent of the other partners or partner.

Capital of the copartnership, how to be made up.

XIII. THAT the capital or joint-stock of the said copartnership shall consist of the sum of £——, to be made up and brought into the said trade or business in manner hereinafter mentioned (that is to say), the stock now used in carrying on the said trade, (the particulars whereof are

(*g*) This clause may usually be omitted.

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

mentioned and set forth in a book which has been signed by the said A. B., C. D., E. F., G. H., and I. K.,) is to be taken and deemed to be of the value of £——, and to be the property of, or to be brought into the said trade or business of the said copartnership by the said A. B., C. D., E. F., and G. H., in the proportions following (that is to say), five shares thereof by the said A. B., two shares thereof by the said C. D., two shares thereof by the said E. F., and two shares thereof by the said G. H., and the sum of £——, the residue of the said capital or joint-stock, is to be advanced and brought into the said trade or business by the said I. K.

Capital and profits to be employed in the copartnership business.

XIV. THAT the said capital and joint-stock, and the gains and profits arising from the same, shall (subject as hereinafter is mentioned) be used and employed in the trade or business of the said copartnership.

Outgoings of the copartnership to be paid out of the capital and profits, or, in case of deficiency, by the several copartners in certain proportions.

XV. THAT the rent of the houses, mills, and buildings in —— aforesaid, or of any other houses, mills, or buildings where the trade or business of the said copartnership shall be carried on; and all repairs, additions, and alterations of, to, in or about the same; and all taxes, rates, assessments, payments for insurance against loss by fire, and other outgoings whatsoever, for or in respect of the same; and the salaries, wages, or maintenance of all clerks, travellers, workmen, servants, or apprentices, who shall be employed in or about the trade or business of or belonging to the said copartnership; and all charges and expenses which shall be incurred in or about the trade or business of the said copartnership, or in anywise relating thereto; and all duties, debts, and monies which shall become payable for or upon account of the said trade or business; and all losses and damages which shall happen in or about the same, shall be paid, defrayed, and borne by and out of the joint-stock of the said copartnership; and the gains and profits arising from the same, or in case the same shall become deficient, then by all of them the said A. B., C. D., E. F., G. H., and I. K., out of their respective separate estates in the shares following (that is to say), nine-twentieth shares thereof by the said I. K., his executors or administrators; five-twen-

tieth shares thereof by the said A. B., his executors or administrators; two-twentieth shares thereof by the said C. D., his executors or administrators; two-twentieth shares thereof by the said E. F., his executors or administrators; and two-twentieth shares thereof by the said G. H., his executors or administrators.

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

XVI. THAT none of them the said A. B., C. D., E. F., and G. H., shall, without the consent in writing of the other or others of them, employ any of the monies, goods, or effects belonging to the said copartnership, or engage the credit thereof in any matter or thing, except upon the account or for the use and benefit of the said copartnership (*h*).

No partner, without the consent of his copartners, to employ partnership property for other than partnership purposes;

XVII. THAT in all cases where there shall be occasion to give any bond, note, bill, or other security for the payment of any sum or sums of money on account of the said copartnership (other than and except when the contrary shall in the common course of business be unavoidable), the same shall be respectively signed and executed by all of them the said A. B., C. D., E. F., and G. H. (*i*).

—or give any security for money, except in the ordinary course of business;

XVIII. THAT if any of them the said A. B., C. D., E. F., and G. H., shall give any such bond, note, bill, or other security as aforesaid (except in the case before mentioned) which shall not be executed and signed by the others or other of them, then every such bond, note, bill, or other security shall be deemed to be given on the separate account of the person or persons giving the same; and he or they shall accordingly pay, satisfy, and discharge the same out of his or their separate estate, and shall indemnify and save harmless the others or other of them, and their and his heirs, executors, and administrators, and their and every of their

—and any security so given to be the separate liability of the partner giving it.

(*h*) This provision, if not expressed, would be implied by law; see supra, p. 370, n. (*a*).

(*i*) As a general rule, it may be laid down, that one partner can bind the others in drawing or accepting bills of exchange, or in signing other instruments, not under seal, in the ordinary course of business; but that one partner cannot bind the others by bond or deed, except in the way of release of a debt or demand. Colly. on Partn., Ch. II., p. 308, et seq., 2nd Edit.

How far a partner can bind the others, by deed or otherwise.

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estates and effects of and from the payment thereof, and all actions, suits, costs, damages, and expenses on account thereof.

No partner to lend or give credit to any person whom a copartner shall previously have forbidden him to trust;

XIX. THAT none of them the said A. B., C. D., E. F., and G. H., shall at any time during the continuance of the said copartnership lend any of the monies, or deliver upon credit any of the goods belonging to the said copartnership, to any person or persons whom the others or other of them shall, previously by notice in writing, have forbidden them or him to trust.

—and any partner having done so, to make good the deficiency.

XX. THAT if any of them the said A. B., C. D., E. F., and G. H., shall, after such notice as aforesaid, lend any money or deliver upon credit any goods of or belonging to the said copartnership, Then and in such case the party so lending or delivering upon credit such money or goods shall pay to the said copartnership so much ready money as the full amount or value of the money or goods which he shall so lend or deliver upon credit as aforesaid.

No partner, without consent of his copartners, to enter into any contract above a certain amount, on pain of the same being deemed his private contract.

XXI. THAT none of them the said A. B., C. D., E. F., and G. H., shall buy, order, or engage in any contract for any —— or other article whatsoever, exceeding the value of £——, without the previous consent in writing of the others or other of them; and if any of them the said A. B., C. D., E. F., and G. H., shall, without such previous consent in writing as aforesaid, buy, order, or engage in any contract for any —— or other article whatsoever exceeding the value of £——, then and in such case the others or other of them shall have it at their or his option either to receive and take such —— or other article for and on account of the said copartnership, or to let the same remain and be for the separate use and benefit of the person or persons who shall have bought or contracted for the same without the consent of the other or others of them as aforesaid.

No partner, without the consent of his copartners, to become bail or surety, &c.

XXII. THAT none of them the said A. B., C. D., E. F., G. H., and I. K., shall, without the consent of the others or other of them in writing first had and obtained, enter into any bond, or become bail, surety, or security with or for any person or persons whomsoever, or subscribe any policy of insurance.

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XXIII. THAT none of them the said A. B., C. D., E. F., G. H., and I. K., shall do or willingly suffer to be done any act, matter, or thing whatsoever whereby or by means whereof the stock in trade, capital, or property of the said copartnership may be seized, attached, extended, or taken in execution.

No partner to do any act whereby the partnership property may be taken in execution.

XXIV. THAT each of them the said A. B., C. D., E. F., G. H., and I. K., shall and will duly and punctually pay and discharge the debts now due and owing, or hereafter, during the continuance of the said copartnership, to become due and owing from him to any person or persons whomsoever; and shall and will at all times hereafter, during the continuance of the said copartnership, save, defend, keep harmless and indemnified the others and other of them, their and his heirs, executors, and administrators, and the stock in trade, capital, and property of the said copartnership and the increase thereof of and from his private and separate debts and engagements, whether already contracted or entered into, or hereafter during the continuance of the said copartnership to be contracted or entered into, and of and from all actions, suits, costs, damages, and expenses on account thereof.

Every partner to pay his private debts, and indemnify the copartnership against them.

XXV. THAT proper books of account shall be kept by the said copartners, and true, plain, and perfect entries made therein of all the monies, goods, wares, merchandize, effects, debts, and other things belonging or owing to or by the said copartnership, or which shall be received, paid, sold, or contracted for in the course of such trade or business, and of all such other transactions, matters, or things in anywise relating to the trade or business of the said co-partnership as are usually written and entered into books of account kept by persons engaged in the business of a ——, together with all such circumstances of names, times, and places as may be necessary or useful for the better manifestation of the state and proceedings of the trade or business of the said copartnership.

Books of account to be kept;

XXVI. THAT the said books of account, together with all bonds, notes, bills, specialties, assurances, securities, letters, and other writings which shall from time to time

—and to remain with all partnership documents at the

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concern or belong to the said copartnership, shall remain and be kept at the counting-house in —— aforesaid, or in such other place where the trade or business of the said copartnership shall for the time being be carried on, as the said copartners shall determine.

place of business;

—and each partner to have free access thereto.

XXVII. THAT each of them the said A. B., C. D., E. F., G. H., and I. K., shall and may have free access to inspect, examine, cast up, and copy out the same at his and their own will and pleasure (*k*).

Annual accounts and valuation to be made on a certain day in each year.

XXVIII. THAT on the —— day of ——, in the year ——, and on the —— day of —— in every succeeding year during the continuance of the said copartnership, a full and general account and rest in writing shall be made and taken by the said A. B., C. D., E. F., G. H., and I. K., of all such goods, wares, articles, and things as shall have been bought or sold in the trade or business of the said copartnership (in the first of such general accounts from the day of the commencement of the said copartnership, and in each of such subsequent general accounts from the day of the last preceding general account), and of all the monies, stock in trade, effects, debts, and things belonging or due or owing to the said copartnership, and of all monies and debts due or owing by the said copartnership, and of all the liabilities of the said copartnership, and of all such matters and things as are usually comprehended in general accounts of the like nature taken by persons engaged in the business of a ——, and that a just valuation or appraisement shall be made of all the particulars included in such account, which require and are capable of valuation or appraisement; And that the said general account or rest and valuation and appraisement shall, from time to time, be written into five books, and be signed in every such book by every of them the said A. B., C. D., E. F., G. H., and I. K., within three calendar months

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Partners necessary right to see all partnership documents.

(*k*) This and the two preceding clauses, although always inserted in partnership deeds, do little more than distinctly express what is essential for the purposes of a partnership. See Lord Eldon's Observations, 1 Jac. & Walk. 593.

after the time appointed for taking thereof respectively, and that after such signature each of the said copartners shall take one of the said books into his custody, and shall be bound and concluded by every such account respectively, save and except that if any manifest error shall be found in any such account, valuation, or appraisement within twelve calendar months after the same shall have been so signed by all the said copartners, and shall be signified by any of the said copartners to the others or other of them, then and in such case such error shall be rectified (*l*).

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XXIX. THAT the said A. B., C. D., E. F., G. H., and I. K., shall be entitled to so much of the gains and profits, arising from the trade or business of the said copartnership, as shall remain after all payments hereinbefore directed to be made thereout shall have been made, in the shares and manner following (that is to say), In each year (if any) during which the said net gains and profits of the trade or business of the said copartnership shall amount to the sum of £—— or upwards, the said I. K., his executors, administrators, or assigns, shall be entitled for his or their share of the said net gains and profits of such year to the sum of £——; And the said A. B., C. D., E. F., and G. H., and their respective executors, administrators, and assigns, shall be entitled to the surplus or residue of such net gains and profits in the shares hereinafter mentioned (that is to say), the said A. B., his executors, administrators, or assigns, to five-eleventh shares thereof; the said C. D., his executors, administrators, or assigns, to two-eleventh shares thereof; the said E. F., his executors, administrators, or assigns, to two-eleventh shares thereof; and the said G. H., his executors, administrators, or assigns, to two-eleventh shares thereof; but in each year (if any) during which the said net gains and profits of the trade or business of the said copartnership shall fall short of the sum of £——, then and in such case, and so often as the same shall happen, the

Partners to share the net profits in specified proportions, varying according to the amount of the profits.

(*l*) If any partner have been guilty of fraud, no annual account in which such fraud is involved will be binding on the other partners, notwithstanding the provision in the text. *Oldaker* v. *Lavender*, 7 Sim. 239.

Fraud will avoid a settled partnership account.

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

said I. K., A. B., C. D., E. F., and G. H., and their respective executors, administrators, and assigns, shall be entitled to the net gains and profits of such year in the shares following (that is to say), the said I. K., his executors, administrators, or assigns, to nine-twentieth shares thereof; the said A. B., his executors, administrators, or assigns, to five-twentieth shares thereof; the said C. D., his executors, administrators, or assigns, to two-twentieth shares thereof; the said E. F., his executors, administrators, or assigns, to two-twentieth shares thereof; and the said G. H., his executors, administrators, or assigns, to two-twentieth shares thereof (*m*).

One partner to draw out his share by quarterly payments, subject to a provision for refunding at the end of the year in case of deficiency.

XXX. THAT the said yearly sum of £——, to which the said I. K., his executors, administrators, or assigns, may so become eventually entitled to receive by and out of the said net gains and profits of the trade or business of the said copartnership as aforesaid, shall be had and received by the said I. K., his executors, administrators, or assigns, by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year; the first quarterly payment thereof to be made on the —— day of ——, now next ensuing; but in case, at the end of any year, it shall appear, upon making the general annual account or rest hereinbefore directed to be made, that the net gains and profits of such year shall not have amounted to the sum of £——, then and in such case, immediately after such general annual account or rest shall have been made and settled, the said I. K. shall repay to the said copartnership the difference between the said annual sum of £—— and the sum which, in such year, he shall have been entitled to receive.

The other part-

XXXI. THAT in any year in which the said I. K., his

How the shares of profits are to be ascertained when not fixed by the articles.

(*m*) If there were no express provision as to the distribution of profits, the partners would be entitled in proportion to their shares of capital, if those shares could be ascertained; but, if the shares could not be ascertained, or one had no share in the capital, it seems that the partners would be entitled to the profits in equal shares, or in such shares as a jury should determine. Colly. on Partn., pp. 105—107.

executors, administrators, or assigns, shall, under or by virtue of these presents, become entitled to the said sum of £——, it shall be lawful for the said A. B. to have and take out of the said net gains and profits of the trade or business of the said copartnership, by equal quarterly payments, on the days lastly hereinbefore mentioned, the sum of £—— for his own use; and for each of them the said C. D., E. F., and G. H., to have and take out of the said net gains and profits, by equal quarterly payments, on the days lastly hereinbefore mentioned, the sum of £—— for his own use; but in case, at the end of any year, it shall appear, upon making the general annual account or rest hereinbefore directed to be made, that the net gains and profits of such year have not amounted to the sum of £——, then and in such case, immediately after such general annual account or rest shall have been made and settled, each of them the said A. B., C. D., E. F., and G. H., shall repay to the said copartnership the difference between the sum which, in such year, he shall have actually received, and the sum which, in such year, he shall have been entitled to receive.

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ners also to draw quarterly sums, subject to a similar provision.

XXXII. THAT in any year in which the net gains and profits of the said copartnership shall not amount to the sum of £——, it shall be lawful for the said I. K., A. B., C. D., E. F., and G. H., to receive and take the whole of the said net gains and profits of such year in the shares in which they are entitled to the same as aforesaid.

When the net profits do not amount to a certain sum, partners to divide the whole.

XXXIII. THAT within six calendar months next after the expiration or determination of the said copartnership a full and general account in writing shall be made and taken by the said A. B., C. D., E. F., G. H., and I. K., of all the monies, stock in trade, effects, debts, and things then belonging, or due, or owing to the said copartnership, and of all monies and debts due or owing by the said copartnership, and of all the liabilities of the said copartnership, and a just valuation and appraisement shall be made of all the particulars included in such account, which require and are capable of valuation or appraisement.

On the expiration or determination of the partnership a general account be taken;

XXXIV. THAT, at the expiration or determination of the said copartnership, the said A. B., C. D., E. F., G. H., and

—and the partners to be entitled to the

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property of the firm in specified proportions, varying according to its value.

I. K., and their respective executors, administrators, and assigns, shall be entitled to the said monies, stock in trade, effects, debts, and things then belonging, or due or owing to the said copartnership in manner following (that is to say), if the same (after deducting all monies and debts due or owing by the said copartnership) shall amount in value to the sum of £——, or upwards, then and in such case the said I. K., his executors, administrators, or assigns, shall be entitled to have and receive by and out of the same the sum of £—— for his and their own benefit; and the said A. B., C. D., E. F., and G. H., and their respective executors, administrators, and assigns, shall be entitled to the surplus or residue of the same premises in the shares following (that is to say), the said A. B., his executors, administrators, or assigns, to five-eleventh shares thereof; the said C. D., his executors, administrators, or assigns, to two-eleventh shares thereof; the said E. F., his executors, administrators, or assigns, to two-eleventh shares thereof; and the said G. H., his executors, administrators, or assigns, to two-eleventh shares thereof; but if at the expiration or determination of the said copartnership, the said monies, stock in trade, effects, debts, and things then belonging, or due or owing to the said copartnership shall not (after deducting all monies and debts due or owing by the said copartnership) amount in value to the sum of £——, then and in such case the said I. K., A. B., C. D., E. F., and G. H., shall be entitled to the same in the shares following (that is to say), the said I. K., his executors, administrators, or assigns, to nine-twentieth shares thereof; the said A. B., his executors, administrators, or assigns, to five-twentieth shares thereof; the said C. D., his executors, administrators, or assigns, to two-twentieth shares thereof; the said E. F., his executors, administrators, or assigns, to two-twentieth shares thereof; and the said G. H., his executors, administrators, or assigns, to two-twentieth shares thereof.

—and each partner to take upon himself the payment of

XXXV. THAT immediately after the said last-mentioned account shall have been taken and settled, the said A. B., C. D., E. F., G. H., and I. K., shall forthwith pay

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or provide for the speedy and punctual payment of all monies and debts then due or owing by the said copartnership, and for meeting all the liabilities thereof, in the shares following (that is to say), nine-twentieth shares thereof by the said I. K., his executors, administrators, or assigns; five-twentieth shares thereof by the said A. B., his executors, administrators, or assigns; two-twentieth shares thereof by the said C. D., his executors, administrators, or assigns; two-twentieth shares thereof by the said E. F., his executors, administrators, or assigns; and two-twentieth shares thereof by the said G. H., his executors, administrators, or assigns.

a specified proportion of the debts of the firm;

XXXVI. THAT immediately after the said last-mentioned account shall have been taken and settled, the monies, stock in trade, effects, debts, and things belonging, or due or owing to the said copartnership, shall be divided and parted amongst the said A. B., C. D., E. F., G. H., and I. K., in the shares in which they shall be severally entitled to the same under the provisions in that behalf hereinbefore contained; and immediately upon such division and partition, the said A. B., C. D., E. F., G. H., and I. K., shall well and sufficiently assign, make over and deliver unto each other, his executors, administrators, and assigns, his share of the same premises; and authorize and empower him and them to recover and receive the same; and make, do, and execute all such acts, deeds, matters, and things as shall be necessary or expedient for vesting the sole right and property therein, in the partner to whom the same shall upon such division and partition belong; and that after such division and partition shall be made, none of them the said A. B., C. D., E. F., G. H., and I. K., or their respective executors or administrators, shall release any debt which shall upon the said division or partition be allotted or assigned to any other partner, or in any respect interfere in the receipt or recovery thereof, or otherwise in or about the same, except upon the express request of the person to whom the same shall have been so allotted or assigned as aforesaid.

—and to have his share of the property effectually assigned to and vested in him;

XXXVII. THAT immediately after the said last-men-

—and to give

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

tioned account shall have been taken and settled, each of them the said A. B., C. D., E. F., G. H., and I. K., shall give unto the others and other of them a bond in a sufficient penalty for the payment of his share of the monies and debts then owing by the said copartnership, and meeting his share of the liabilities thereof; and for indemnifying the others, and each of the others of them, their and his heirs, executors, and administrators, of and from the payment of such share of the said monies and debts; and of and from such share of the said liabilities; and of and from all losses, damages, costs, charges, and expenses on account thereof (*n*).

a bond for indemnity against his share of the debts.

If the sleeping partner die during the partnership, the other partners to purchase his share upon certain terms varying in certain events;

XXXVIII. THAT if the said I. K. shall die before the expiration or sooner determination of the said copartnership, then and in such case the surviving partners shall be entitled to the share of him the said I. K. of and in the capital stock in trade and property of the said copartnership, paying for the same in manner hereinafter mentioned (that is to say), If the said I. K. shall die before the said —— day of ——; or if, at the annual rest next preceding the decease of the said I. K., the capital stock in trade and property of the said copartnership shall amount to the sum of £—— or upwards, then and in either of such cases the said A. B., C. D., E. F., and G. H., their executors, administrators, or assigns, shall, at the expiration of two years

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Provisions for winding up the affairs of a partnership at the end of the term.

(*n*) In the absence of express stipulation as to the mode of winding up the affairs of a partnership upon its dissolution, either by efflux of time, death, or any other cause, the partnership assets must be converted into money, and the produce, after satisfying the debts, divided among the partners in proportion to their shares. Colly. on Partn. 146. And even where articles stipulate, (as in the text), for a division of the assets at the end of the partnership, unless the parties can agree among themselves, a sale and not a specific division of the assets will be directed. *Rigden* v. *Pierce*, Madd. & Geld. 353. In that case, however, it does not appear that the articles contained any provision for referring disputes to arbitration, and the articles as stated in the report provide for a division in specie in very general terms.

The provisions in the next Precedent for winding up the affairs of the partnership at the end of the term, are more succinct and better adapted for common cases than those in the present Precedent.

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next after the decease of him the said I. K., pay to the executors, administrators, or assigns, of him the said I. K., the sum of £——, with interest for the same, at the rate of £5 for £100 for a year, to be computed from such of the aforesaid quarterly days of payment as shall last precede the decease of the said I. K.; such interest to be paid by equal quarterly payments, and the first quarterly payment thereof to be made on such of the said quarterly days of payment as shall happen next after the decease of the said I. K.; and then and in such case the said A. B., C. D., E. F., and G. H., shall thenceforth be entitled to the capital stock in trade and property of the said copartnership in the shares following (that is to say), the said A. B., his executors, administrators, or assigns, to five-eleventh shares thereof; the said C. D., his executors, administrators, or assigns, to two-eleventh shares thereof; the said E. F., his executors, administrators, or assigns, to two-eleventh shares thereof; and the said G. H., his executors, administrators, or assigns, to two-eleventh shares thereof: but if the said I. K. shall not die before the said —— day of ——, and at the annual rest next preceding the death of the said I. K., the capital stock in trade and property of the said copartnership shall not amount to the said sum of £——; then and in such case the said A. B., C. D., E. F., and G. H., and the executors, administrators, or assigns, of the said I. K., shall be entitled to the said capital, stock in trade and property in the shares following (that is to say), the executors, administrators, or assigns of the said I. K., to nine-twentieth shares thereof; the said A. B., his executors, administrators, or assigns, to five-twentieth shares thereof; the said C. D., his executors, administrators, or assigns, to two-twentieth shares thereof; the said E. F., his executors, administrators, or assigns, to two-twentieth shares thereof; and the said G. H., his executors, administrators, or assigns, to two-twentieth shares thereof: and the said A. B., C. D., E. F., and G. H., their executors, administrators, or assigns, shall pay to the said I. K., his executors, administrators, or assigns, the amount of his or their nine-twentieth shares of the said capital stock in trade and property at the

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time hereinbefore appointed for the payment of the said sum of £——, with interest for such amount, at the times and in the manner hereinbefore appointed for payment of the interest on the said sum of £——.

—and give a bond for payment of the purchase-money, and for indemnity against the debts and liabilities of the firm.

XXXIX. THAT if the said I. K. shall die during the said copartnership, the surviving copartners or copartner shall, at their or his own cost, at or before the expiration of one calendar month from the death of the said I. K., become jointly and severally bound by a bond in a sufficient penalty, unto the executors or administrators of the said I. K., for the due payment to them of such sum of money as shall become due to him or them under the provisions in that behalf hereinbefore contained, with interest for the same as aforesaid, and for indemnifying and saving harmless the heirs, executors, and administrators of the said I. K., and his and their estates and effects, against the debts, obligations, engagements, and liabilities of the said copartnership, and of and from all actions, suits, accounts, reckonings, claims, and demands for or upon account of the trade or business of the said copartnership, or the debts, obligations, engagements, or liabilities of the said copartnership.

XL. THAT on the execution of such bond the executors or administrators of the said I. K. shall well and effectually assign and make over unto the surviving copartners or copartner, their or his executors or administrators, in such manner as their or his counsel shall advise, the part, share, right, title, and interest of the said I. K., or of his executors or administrators, of and in the capital, stock in trade, and property, then, or at the time of the death of the said I. K., belonging to the said copartnership.

Proper allowance in such case to be made for bad and doubtful debts.

XLI. THAT in settling accounts between the executors or administrators of the said I. K., and the surviving copartners or copartner, proper allowance shall be made for such debts then owing to the said copartnership as shall be thought bad or doubtful, and for such of the undertakings in which the copartnership shall be then engaged, as shall appear to be attended with particular risk.

The executors

XLII. THAT until such security as aforesaid for the

monies appearing to be due to the executors or administrators of the said I. K. from the surviving copartners or copartner shall have been given as aforesaid, such executors or administrators shall be interested in the said capital, stock in trade, and property belonging to the said copartnership at the decease of the said I. K., and in the gains and profits thereof, as fully and to all intents and purposes as the said I. K. would have been in case he had been living, but by way of security only for the money so to be paid to the executors or administrators of the said I. K., by such surviving copartners or copartner as aforesaid (*o*).

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or administrators of the deceased partner to be partners till the proper security be given for the payment of the price of his share.

XLIII. THAT if any one of them the said A. B., C. D., E. F., and G. H., shall die during the said copartnership, then and in such case the share of him so first dying of and in the capital, stock in trade, and property of the said copartnership, shall go and accrue to the survivors of them the said A. B., C. D., E. F., and G. H., and to the said I. K., his executors or administrators, in equal shares and proportions.

If any one of the other partners die during the partnership his share to accrue to the survivors;

XLIV. THAT such surviving or other partners shall thenceforth carry on the business of the said copartnership upon the terms and according to the stipulations hereinbefore contained, as nearly as circumstances will permit, until the expiration or sooner determination of the said copartnership.

—who are to carry on the business as before;

XLV. THAT the said surviving or other partners, their respective executors and administrators, shall immediately, upon the expiration or determination of the said copartnership, or sooner, if such surviving or other partners shall think proper, pay in equal proportions unto the executors or administrators of the partner so first dying, the amount or value in money of the part or share of the partner so first dying, of or in the capital, stock in trade, and property of the said copartnership, with interest for

—and on the expiration or determination of the partnership to pay the share of the deceased partner to his representatives, and to pay interest for the same in the mean time.

(*o*) A partnership is dissolved by the death of one of the partners, but not to all intents and purposes, even in the absence of express stipulation; for the connexion still remains until the affairs are wound up. *Ex parte Williams*, 11 Ves. 5.

Connexion between the representatives of deceased and surviving partners.

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the same in the mean time, after the rate of £5 for £100 by the year, to be paid by four equal quarterly payments, the first thereof to be made at the expiration of three calendar months next after the decease of the partner so first dying.

Method of ascertaining the value of the share of the partner first dying.

XLVI. THAT the share of the partner so first dying shall be valued and ascertained in manner hereinafter mentioned (that is to say), If such partner shall die before any annual account or rest shall have been taken or made as aforesaid, or before the —— day of —— in any year, an account of the capital, stock in trade, and property of the said copartnership shall, as soon as may be after the decease of the partner so first dying, be taken by the surviving and other partners, and the executors or administrators of the partner so first dying, and a just valuation or appraisement shall be made of all the particulars included in such account, which require and are capable of valuation or appraisement, and the value of the share of the partner so first dying of and in the said capital, stock in trade, and property shall be ascertained and determined; but if such partner shall die after an annual account, or rest shall have been taken or made as aforesaid, and on or after the —— day of —— in any year, then and in such case no new account, valuation, or appraisement shall, for the purpose lastly hereinbefore mentioned, be taken of the capital, stock in trade, and property of the said copartnership, but the value of the share of the partner so first dying of and in the capital, stock in trade, and property of the said copartnership, shall be ascertained and determined from the annual account, or rest and valuation, and appraisement lastly preceding the death of such partner, and without any allowance for profits or interest from the time of such annual account or rest having been made and taken.

The surviving partners to give to the representatives of the one first dying, a bond to secure the payment of his share, and to indemnify his

XLVII. THAT the surviving and other partners, their executors or administrators, shall, at their own costs, at or before the expiration of one calendar month from the death of the partner so first dying, become jointly and severally bound by a bond in a sufficient penalty, unto the executors or administrators of the partner so first dying, for the due payment to them of such sum of money as shall become

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due to them under the provisions in that behalf hereinbefore contained, with interest for the same as aforesaid, and for indemnifying and saving harmless the heirs, executors, and administrators of the partner so first dying, and his and their estates and effects, against the debts, obligations, engagements, and liabilities of the said copartnership, and of and from all actions, suits, accounts, reckonings, claims, and demands for or upon account of the trade or business of the said copartnership, or the debts, obligations, engagements, or liabilities of the said copartnership.

estate against the debts of the firm.

XLVIII. THAT in settling accounts between the executors or administrators of the partner so first dying and the surviving or other partners, proper allowance shall be made for such debts then owing to the said copartnership as shall be thought bad or doubtful, and for such of the undertakings in which the said copartnership shall be then engaged as shall appear to be attended with particular risk.

Proper allowance to be made in such case for bad debts.

XLIX. THAT if any other or others of them the said A. B., C. D., E. F., and G. H., shall die during the said copartnership, then and in such case, and so often as the same shall happen, such general account shall be made and taken, and all such other acts, deeds, matters, and things shall be made, done, and executed by and between the then surviving or other partners or partner, and the executors or administrators of the partner or partners so dying, as are hereinbefore directed to be made, done, and executed in the event of the decease of the partner first dying during the said copartnership, or as near thereto as circumstances will admit.

In case of any other or others of the active partners so dying, the same provisions to be applicable.

L. THAT if any of them the said A. B., C. D., E. F., and G. H., shall die in the lifetime of the said I. K. during the said copartnership, and thereby, or by any other means, the said I. K. shall become entitled to any other share or shares of the capital, stock in trade, and property of the said copartnership besides his original share therein, then and in such case, and so often as the same shall happen, the said I. K. shall be interested in such surviving, accruing, or other share or shares upon such terms and conditions, and be entitled to receive in respect thereof, in proportion to the value thereof, such an annual sum or sums of money,

Provision as to the payment to the sleeping partner of an increased annual sum in respect of any share which may accrue to him by the death of a copartner.

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or such share or shares of the net profits of the said copartnership as are hereinbefore mentioned and provided in respect to the original share of the said I. K. in the said capital, stock in trade, and property of the said copartnership.

If any active partner engage in another business, or if any partner improperly use the name of the firm, the partnership may be determined as to him as if he were dead.

LI. THAT if any of them the said A. B., C. D., E. F., and G. H. shall at any time during the said copartnership be engaged, or concerned, or interested in any trade or business without the consent, in writing, of the others or other of them, first had and obtained; or if any of them the said A. B., C. D., E. F., G. H., and I. K., shall issue, give, accept, indorse, or negotiate any bill of exchange, or any promissory note, or any public or other security in the copartnership name, except upon the account of the joint trade thereof, and conformably to the true intent and meaning of these presents, then and in such case it shall be lawful for the other partners or partner at any time thereafter to determine the said copartnership, and then and in such case the said capital, stock in trade, and property of the said copartnership shall belong to, and the trade thereof be carried on by, such other partners or partner for their or his own benefit, and such payment or compensation shall be made to the partners or partner so becoming engaged, or concerned, or interested in any other trade or business, or so issuing, giving, accepting, indorsing, or negotiating any such note, bill, or security, as aforesaid, as their or his executors or administrators would have been entitled to if such partners or partner had died during the said copartnership (*p*).

Arbitration clauses.

LII. THAT if any doubt, difference, or dispute shall at any time or times hereafter arise between or among all or any of them the said A. B., C. D., E. F., G. H., and I. K., or between any of them and the executors, administrators, or assigns of any other or others of them, or between their respective executors, administrators, or as-

(*p*) The foregoing clauses, providing for the deaths of partners, are somewhat long and special. The corresponding provisions in the next Precedent will be found shorter and better adapted for general use.

signs, touching the construction of these presents, or any clause, matter, or thing herein contained, or any account, valuation, appraisement, or division of assets, debts, or liabilities to be made as hereinbefore is mentioned, or any other matter or thing whatsoever in anywise relating to or concerning the said copartnership, or the trade, business, or affairs thereof, then and in such case and so often as the same shall happen, such doubt, difference, or dispute shall be reduced into writing, and be submitted and referred to the arbitration of three indifferent persons, one to be from time to time chosen by each of the parties so doubting, differing, or disputing, within one calendar month after either of them shall have made to the other a requisition to that effect, and the third to be named by the two persons from time to time first chosen within one calendar month after they shall have been themselves chosen.

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LIII. THAT if either of the parties so doubting, differing, or disputing as aforesaid, shall by any writing under his or their hand or hands require the other of the said parties to submit and refer the same to arbitration, and in pursuance of the covenant lastly hereinbefore contained, to name some person as arbitrator; and if the party to whom such requisition shall be made shall, for the space of one calendar month after such requisition, neglect or refuse to comply therewith, or shall name a person who shall neglect or refuse to act as such arbitrator as aforesaid, then and so often as the same shall happen, it shall be lawful for the person chosen to be arbitrator on behalf of the party making such requisition, by any writing under his hand to appoint some person to act as arbitrator on behalf of the party who, or the arbitrator named by whom, shall refuse or neglect as aforesaid, and that such two persons shall name a third arbitrator as aforesaid.

Provision in case of any party refusing to name an arbitrator, or of the arbitrator named refusing to act.

LIV. THAT it shall be lawful for the said arbitrators, or any two of them, to arbitrate, determine, and award of and concerning all and every the matters and things touching which such doubt, difference, or dispute as aforesaid shall have arisen, and (if they or any two of them shall see fit so to do), at the expense of the parties in difference, or one of

Arbitrator to determine matters in dispute, and to take advice, if necessary.

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them, to require the aid and take the opinion of any accountants, counsel, or other person or persons, and to adopt such other measures and give such directions as shall appear to the said arbitrators or any two of them advisable or expedient.

Parties in dispute to abide by the award if ready to be delivered within a given time.

LV. THAT the parties so doubting, differing, or disputing as aforesaid, and all persons claiming by, from, through, or under them respectively, shall in all things obey, abide by, observe and perform the award, order, and determination of the aforesaid arbitrators, or of any two of them, so as the award of the said arbitrators, or of such two of them as shall concur, be made in writing under their hands, and be ready to be delivered to the said parties respectively, or such of them as shall desire the same, within three calendar months next after the third of such three arbitrators for the time being shall have been named.

Parties disputing to submit to be examined, and to furnish all necessary evidence.

LVI. THAT the said parties so doubting, differing, or disputing as aforesaid, and all persons claiming by, from, through, or under them respectively, will, if required by the said arbitrators, or any two of them, attend personally and submit to be examined relative to the matters in doubt, difference, or dispute, and will produce to and deposit with the said arbitrators, or any two of them, all such deeds, evidences, letters, papers, and writings relative to the matters in doubt, difference, or dispute, as shall be in the possession or power of the said parties respectively, or the persons claiming as aforesaid, and as the said arbitrators or any two of them may wish to peruse or inspect; and will, so far as in them respectively may lie, furnish or cause to be furnished all such documents, proofs, and evidence, and do or cause to be done all such acts and things for better enabling them to make the said award, as the said arbitrators or any two of them shall require.

Witnesses and parties may be examined upon oath.

LVII. THAT the said parties respectively, and all persons claiming by, from, through, or under them respectively, if examined, and all other witnesses who shall be produced to give evidence before the said arbitrators or any two of them, of and concerning the premises (if required by the opposite party, or the party against whom such witness

shall be produced), and also all accountants and other persons (except counsel), who may be called upon by the said arbitrators or any two of them as aforesaid, shall, (if the same shall be thought proper by such arbitrators), be examined upon oath or upon their affirmation, in cases where affirmation is allowed by law instead of oath.

BETWEEN ACTIVE PARTNERS AND A SLEEPING PARTNER.

LVIII. THAT the costs, charges, and expenses of and attending, or in anywise relating to any arbitration, including the compensation to be made to the arbitrators for their trouble, and the fees and compensation to be made to any accountants, counsel, or other person or persons who may be called on as aforesaid, shall be in the discretion of the said arbitrators or any two of them, who shall direct by whom and to whom and in what manner the same shall be paid, and who shall be at full liberty, if they see fit, to direct that any of such costs and expenses shall be reckoned as between attorney and client, and not as between party and party.

Costs to be in the discretion of the arbitrator.

LIX. THAT any submission or reference to arbitration under or by virtue of these presents, may be made a rule of any of her Majesty's courts at Westminster, according to the statute in that case made and provided, if any such court shall so please, and either party shall be at liberty to apply to the said court for that purpose, and to instruct counsel to consent thereto for the other party (*q*). IN WITNESS &c.

Submission or reference to arbitrators may be made a rule of Court.

(*q*) Clauses for referring disputes between partners to arbitration, are nearly always inserted in partnership deeds, and hardly ever acted upon. Many of the general points of the law relating to arbitration are noticed in the notes to Precedent VI., p. 120, Vol. 3, ante. The cases which have been reported in regard to arbitration under provisions in artnership articles, are collected in Colly. on Partn. 152—154, 2nd Edit.

Arbitration clauses.

XLV.

BETWEEN TWO PERSONS.

ARTICLES *of* COPARTNERSHIP *between* TWO *Persons.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., of the one part; and C. D., of &c., of the other part: WITNESSETH, that in consideration of the mutual trust and confidence which the said A. B. and C. D. have, and repose in each other, each of them the said A. B. and C. D., (so far as the covenants and agreements hereinafter contained are to be observed or performed by him, his heirs, executors, or administrators), doth for himself, his heirs, executors, and administrators, covenant with the other of them, his executors and administrators, by these presents in manner following (that is to say):

Witnesseth mutual covenants by the intended copartners.

To become and remain copartners.

I. THAT they the said A. B. and C. D. shall and will become, be, and remain copartners in the business of ——— (*a*).

Term of copartnership.

II. THAT the said copartnership shall commence on the day of the date of these presents (*b*), and shall continue for the term of fourteen years hence next ensuing, if both of them the said A. B. and C. D. shall so long live (*c*).

Proviso for the determination of the copartnership at the end of the first seven years.

III. THAT if, nevertheless, at the end of seven years, to be computed from the day of the date of these presents, either of the said partners shall be desirous that the said copartnership shall cease and determine, and of such his desire shall give not less than six calendar months' previous notice in writing to the other of them, or shall leave such notice at the place where the said business shall for the time being be carried on; then and in such case imme-

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(*a*) See supra, p. 370, n. (*a*). (*b*) See supra, p. 370, n. (*b*).
(*c*) See supra, p. 371, n. (*c*).

diately upon the end of the said seven years, the said copartnership shall absolutely cease and determine.

Firm and style.

IV. THAT the firm and style of the said copartnership shall be ——— (*d*).

Place of business.

V. THAT the business of the said copartnership shall be carried on at ——, or at such other place or places as the said copartners shall hereafter determine.

Partners to attend to the business.

VI. THAT both of them the said A. B. and C. D. shall and will, at all times during the continuance of the said copartnership, diligently and faithfully employ themselves in and about the business of the said copartnership, and carry on, manage, and conduct the same for the greatest benefit and advantage of the said copartnership.

Partners to be mutually just, and to render accounts to each other when required;

VII. THAT each of them the said A. B. and C. D. shall and will be just and faithful to the other of them, and to the said copartnership, in all buyings, sellings, accounts, reckonings, receipts, payments, dealings, and transactions in or about the business of the said copartnership; and shall and will give, make, and render to the other of them a just and faithful account thereof, when and so often as the same shall be reasonably required.

—and to give each other all necessary information on partnership matters.

VIII. THAT each of them the said A. B. and C. D. shall and will at all times during the continuance of the said copartnership, upon any reasonable request of the other of them, inform the other of them of all such letters, accounts, writings, and other things as shall or may come into his hands or knowledge in anywise touching or concerning the business of the said copartnership (*e*).

Partners not to be engaged in any other business;

IX. THAT neither of them the said A. B. and C. D. shall or will, either by himself or with any other person or persons whomsoever, either directly or indirectly, engage in any trade, manufacture, or business, except upon the account and for the benefit and advantage of the said copartnership (*f*).

(*d*) See supra, p. 371, n. (*d*).

(*e*) The clauses, 7 & 8, express little if any thing more than the law of partnership implies, and may be omitted if brevity is an object.

(*f*) See supra, p. 372, n. (*f*).

BETWEEN TWO PERSONS.

X. THAT neither of them the said A. B. and C. D. shall take any apprentice, or hire or dismiss any clerk, traveller, workman, or servant in the business of the said copartnership, without the consent of the other of them.

—or to hire or dismiss any servant without mutual consent;

XI. THAT neither of them the said A. B. and C. D. shall, at any time during the continuance of the said copartnership, take or go any journey or journies, voyage or voyages for or on account of the business of the said copartnership or otherwise, without the consent of the other of them; and that if either of them shall at any time or times, during the continuance of the said copartnership, take or go any such journey or journies, voyage or voyages, without such consent as aforesaid, he shall for such time as he shall be upon any such journey or journies, voyage or voyages, forfeit a proportional part of his share in the gains and profits of the said copartnership, or the sum of ——, at the option of the other partner (*g*).

—or go any journey on account of the partnership without mutual consent.

Capital,—amount and contribution of,

XII. THAT the capital or joint stock of the said copartnership shall consist of the sum of £——, to be made up and brought into the said business by the said A. B. and C. D. in equal shares.

—and employment of.

XIII. THAT the said capital or joint stock, and the gains and profits arising from the same, (including the premiums to be paid for any apprentice to be taken by either of the said copartners), shall, (subject as hereinafter is mentioned), be used and employed in the business of the said copartnership.

Outgoings of the partnership to be paid out of the capital and profits, or in case of deficiency by the partners in equal shares.

XIV. THAT the rent of the houses, mills, and buildings in —— aforesaid, or of any other houses, mills, or buildings, where the business of the said copartnership shall be carried on, and all repairs, additions, and alterations of, to, in, or about the same, and all taxes, rates, assessments, payments for insurance against loss by fire, and other outgoings whatsoever for or in respect of the same, and the salaries, wages, or maintenance of all clerks, travellers, workmen, servants, or apprentices, who shall be employed

(*g*) This clause may usually be omitted.

in or about the business of the said copartnership, and all charges and expenses which shall be incurred in or about the business of the said copartnership or in anywise relating thereto, and all duties, debts, and monies, which shall become payable for or upon account of the said business, and all losses and damages which shall happen in or about the same, shall be paid, defrayed, and borne by and out of the joint stock of the said copartnership, and the gains and profits arising from the same, or in case the same shall become deficient, then by the said A. B. and C. D. out of their respective separate estates in equal shares.

Neither partner without the consent of his copartner to employ partnership property for other than partnership purposes;

XV. THAT neither of them the said A. B. and C. D. shall, without the consent in writing of the other of them, employ any of the monies, goods, or effects belonging to the said copartnership, or engage the credit thereof, in any matter or thing, except upon the account, or for the use and benefit of the said copartnership (*h*).

—or give any security for money, except in the ordinary course of business;

XVI. THAT in all cases where there shall be occasion to give any bond, note, bill, or other security, for the payment of any sum or sums of money on account of the said copartnership, (other than and except when the contrary shall, in the common course of business, be unavoidable), the same shall be respectively signed and executed by both of them, the said A. B. and C. D. (*i*).

—and any security so given to be the separate liability of the partner giving it.

XVII. THAT if either of them the said A. B. and C. D. shall give any such bond, note, bill, or other security, (except in the cases before mentioned), which shall not be executed and signed by the other of them, then every such bond, note, bill, or other security, shall be deemed to be given on the separate account of the partner giving the same, and he shall accordingly pay, satisfy, and discharge the same out of his separate estate, and shall indemnify and save harmless the other of them, and his heirs, executors, and administrators, and their and every of their estate

(*h*) This provision, if not expressed, would be implied by law, see supra, p. 370, n. (*a*).

(*i*) See supra, p. 375, n. (*i*).

BETWEEN TWO PERSONS.

and estates of and from the payment thereof, and all actions, suits, costs, damages, and expenses, on account thereof.

Neither partner to lend or give credit to any person whom the other shall previously have forbidden him to trust;

XVIII. THAT neither of them the said A. B. and C. D. shall, at any time during the continuance of the said copartnership, lend any of the monies or deliver upon credit any of the goods belonging to the said copartnership to any person or persons whom the other of them shall previously, by notice in writing, have forbidden him to trust.

—and either partner having done so to make good the deficiency.

XIX. THAT if either of them the said A. B. and C. D. shall, after such notice as aforesaid, lend any money or deliver upon credit any goods of or belonging to the said copartnership, Then and in such case the party so lending or delivering upon credit such money or goods shall pay to the said copartnership so much ready money as the full amount or value of the money or goods which he shall so lend or deliver upon credit as aforesaid.

Neither partner without the consent of his copartner to enter into any contract above a certain amount on pain of the same being deemed his private contract.

XX. THAT neither of them the said A. B. and C. D. shall buy, order, or engage in any contract for any ——, or other article whatsoever, exceeding the value of £——, without the previous consent in writing of the other of them, and if either of them the said A. B. and C. D. shall, without such previous consent in writing as aforesaid, buy, order, or engage in any contract for any ——, or other article whatsoever, exceeding the value of £——, then and in such case the other of them shall have it at his option either to receive and take such ——, or other article, for and on account of the said copartnership, or to let the same remain and be for the separate use and benefit of the person who shall have bought or contracted for the same, without the consent of the other of them as aforesaid.

Neither partner without the consent of his copartner to become bail or surety, &c.

XXI. THAT neither of them the said A. B. and C. D. shall, without the consent of the other of them, in writing first had and obtained, enter into any bond or become bail, surety, or security with or for any person or persons whomsoever, or subscribe any policy of insurance.

Neither partner to do any act whereby the partnership pro-

XXII. THAT neither of them the said A. B. and C. D. shall do, or willingly suffer to be done, any act, matter, or thing whatsoever whereby or by means whereof the stock

in trade, capital, or property of the said copartnership may be seized, attached, extended, or taken in execution.

Property may be taken in execution.

XXIII. THAT each of them the said A. B. and C. D. shall and will duly and punctually pay and discharge the debts now due and owing, or hereafter during the continuance of the said copartnership to become due and owing from him to any person or persons whomsoever, and shall and will at all times hereafter, during the continuance of the said copartnership, save, defend, and keep harmless and indemnified the other of them, and his heirs, executors, and administrators, and the stock in trade, capital, and property of the said copartnership, and the increase thereof, of and from his private and separate debts and engagements, whether already contracted or entered into, or hereafter during the continuance of the said copartnership to be contracted or entered into, and of and from all actions, suits, costs, damages, and expenses on account thereof.

Each partner to pay his private debts, and indemnify the copartnership against them.

XXIV. THAT proper books of account shall be kept by the said copartners, and that true, plain, and perfect entries shall be made therein of all the monies, goods, wares, merchandize, effects, debts, and other things belonging or owing to or by the said copartnership, or which shall be received, paid, sold, or contracted for in the course of such business, and of all such other transactions, matters, or things in anywise relating to the business of the said copartnership, as are usually written and entered into books of account kept by persons engaged in the business of ——, together with all such circumstances of names, times, and places as may be necessary or useful for the better manifestation of the state and proceedings of the business of the said copartnership.

Books of account to be kept;

XXV. THAT the said books of account, together with all bonds, notes, bills, specialties, assurances, securities, letters, and other writings which shall from time to time concern or belong to the said copartnership, shall remain and be kept at the counting-house in —— aforesaid, or in such other place where the business of the said copartnership shall for the time being be carried on, as the said copartners shall determine.

—and to remain with all partnership documents at the place of business;

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—and each partner to have free access thereto.

XXVI. THAT each of them the said A. B. and C. D. shall and may have free access to inspect, examine, cast up, and copy out the same at his and their own will and pleasure (*k*).

Annual accounts and valuations to be made on a certain day in each year.

XXVII. THAT on the —— day of ——, in the year ——, and on the —— day of —— in every succeeding year during the continuance of the said copartnership, a full and general account and rest in writing shall be made and taken by the said A. B. and C. D. of all such goods, wares, articles, and things as shall have been bought or sold in the business of the said copartnership, (in the first of such general accounts from the day of the commencement of the said copartnership, and in each of such subsequent general accounts from the day of the last preceding general account), and of all the monies, stock in trade, effects, debts, and things belonging or due, or owing to the said copartnership, and of all monies and debts due or owing by the said copartnership, and of all the liabilities of the said copartnership, and of all such matters and things as are usually comprehended in general accounts of the like nature taken by persons engaged in the business of a ——, and that a just valuation or appraisement shall be made of all the particulars included in such account, which require and are capable of valuation or appraisement, and that the said general account or rest and valuation and appraisement shall from time to time be written into two books, and be signed in each such book by each of them the said A. B. and C. D., within three calendar months after the time appointed for taking thereof respectively, and that after such signature each of them the said copartners shall take one of the said books into his custody, and shall be bound and concluded by every such account respectively, save and except that if any manifest error shall be found in any such account, valuation, or appraisement within twelve calendar months after the same shall have been so signed by both of them the said copartners, and shall be signified by either of the said copartners to

(*k*) See supra, p. 378, n. (*k*).

the other of them, then and in such case such error shall be rectified (*l*).

Partners to have the net profits in equal shares.

XXVIII. THAT the said A. B. and C. D. shall be entitled to so much of the gains and profits arising from the business of the said copartnership as shall remain, after all payments hereinbefore directed to be made thereout shall have been made, in equal shares (*m*).

Partners may every year draw certain quarterly sums out of the net profits, subject to a provision for refunding at the end of the year in case of deficiency.

XXIX. THAT in each year during the said copartnership, it shall be lawful for each of them the said A. B. and C. D. to take out of the net gains and profits of the business of the said copartnership, by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the sum of £——, for his separate use, but in case, at the end of any year, it shall appear, upon making the general annual account or rest hereinbefore directed to be made, that the net gains and profits of such year shall not have amounted to the sum of £——; [*the total amount of the quarterly allowances to both partners*]; then and in such case, immediately after such general annual account shall have been made and settled, each of them the said A. B. and C. D. shall repay to the said copartnership the difference (if any) between the amount of the sums which he shall actually have received in respect of such quarterly payments and the sum which he shall have been entitled to receive as his share of the net gains and profits of the said business.

On the expiration or determination of the partnership, accounts to be taken and settled;

XXX. THAT within the space of six calendar months after the expiration or determination of the said copartnership a full and general account, in writing, shall be made and taken by the said A. B. and C. D. of all the monies, stock in trade, debts, effects, and things then belonging to the said copartnership, and of all monies and debts due or owing by the said copartnership, and of all the liabilities of the said copartnership, and a just valuation and appraisement shall be made of all the particulars included in such account which require and are capable of valuation or appraisement, and immediately after such last mentioned

—and provision

(*l*) See supra, p. 379, n. (*l*).

(*m*) See supra, p. 380, n. (*m*).

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account shall have been so taken and settled, the said A. B. and C. D. shall forthwith make due provision for the payment of all monies and debts then due or owing by the said copartnership, and for meeting all the liabilities thereof; and subject thereto, all the monies, stock in trade, debts, effects, and things then belonging to the said copartnership, shall be divided between the said A. B. and C. D. in equal shares, and such instruments in writing shall be executed by the said A. B. and C. D. respectively, for facilitating the getting in of the outstanding debts and effects of the said copartnership, and for indemnifying each other touching the premises, and for vesting the sole right and property in the said respective shares of and in the said stock in trade, property, and effects in the parties to whom the same respectively shall upon such division belong, and for releasing to each other all claims on account of the said partnership as are usual in cases of the like nature (*n*).

made for debts and liabilities;

—and the residue of the copartnership property to be divided in equal shares; and all necessary releases, indemnities, and other instruments executed.

Provision in case one partner die during the partnership, for ascertaining the sum to be paid to his representatives;

XXXI. THAT in case either of the said partners shall die during the continuance of the said copartnership, the executors or administrators of the deceased partner shall, if such death shall happen before the day hereinbefore appointed for the first general yearly account or rest and valuation, be entitled to the capital belonging to and brought in by such deceased partner, or if the same shall happen after the day hereinbefore appointed for the first annual account or rest and valuation, then shall be entitled to such sum of money as the share of the deceased partner of and in the monies, stock in trade, debts, and effects of the said copartnership shall, upon the then last general yearly account or rest and valuation amount unto, or as such share would have amounted unto in case such yearly account had been taken on the —— day of —— [*the proper day for taking such account*], immediately preceding such death; And in either case the executors or administrators of the said deceased partner shall also be entitled to an allowance after the rate of £—— per cent. per annum upon the capital or share of capital and property (as the

—with a certain allowance in lieu of profits;

(*n*) See supra, p. 384, n. (*n*).

case may be) of such deceased partner, in lieu of profits, from the commencement of the said copartnership to the time of such death, or from the then last general account or rest and valuation to the time of such death, (as the case may happen); such allowance in lieu of profits to be paid by the surviving partner, his heirs, executors or administrators, on demand, and such other sum of money as the executors or administrators of the deceased partner shall so become entitled to as aforesaid, with interest for the same, after the rate of £—— for every £100, by the year, computed from the decease of the deceased partner, to be secured and paid as follows, (that is to say), the surviving partner, his executors or administrators shall, within —— next after such death, duly execute and deliver unto the executors or administrators of the deceased partner a bond in a penalty double the principal, conditioned for the payment of the same sum of money, with interest after the rate aforesaid, from the time of such decease, in manner following, (that is to say), one equal third part of such principal sum with the interest on the same third part, at the end of six calendar months from the date of such bond; one other equal third part of such principal sum with interest on the same third part, at the end of twelve calendar months from the date of such bond; and the remaining equal third part of such principal sum and interest at the end of eighteen calendar months from the date of such bond.

—and determining the mode and time of payment, and the security to be given by the surviving co-partner;

XXXII. THAT the surviving partner, his executors or administrators, shall also give and execute a bond in a sufficient and reasonable penalty unto the executors or administrators of the deceased partner for indemnifying them, and the estate and effects of the deceased partner, of and from the debts due or owing from the said copartnership at the time of such decease, and the liabilities thereof, and of and from all actions, suits, damages, and expenses whatsoever on account of the same; and the executors or administrators of the partner so dying shall release and assign unto the surviving partner, his executors and administrators, all their share, right, title, and interest of, in, and to the monies, stock in trade, debts, effects, and things belong-

—and for the execution of proper indemnities and releases.

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ing or due and owing to the said copartnership, and empower and enable him and them, as much as in them lies, to recover and receive the same (*o*).

Arbitration clauses.

XXXIII. THAT if any doubt, difference, or dispute shall at any time or times hereafter arise between the said A. B. and C. D., or between one of them and the executors or administrators of the other of them, or between their respective executors or administrators, touching the construction, &c. [*Arbitration clauses, supra, page* 390, *et seq.*] IN WITNESS &c.

(*o*) See supra, p. 387, n. (*o*); p. 390, n. (*p*).

XLVI.

BETWEEN TWO PERSONS FOR THEIR JOINT LIVES.

ARTICLES *of* COPARTNERSHIP *between* TWO *Persons for their* JOINT LIVES. RECITALS, *and* STIPULATIONS *as to the* PURCHASE *by the intended Copartners of the* GOODWILL *and* STOCK IN TRADE *of their Business.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of the one part, and C. D., of &c., of the other part.

Recital that the person from whom the business is to be purchased is possessed of a leasehold shop, fixtures, and stock in trade;

WHEREAS under and by virtue of an indenture of assignment, bearing date the —— day of ——, and made or expressed to be made between [*parties*], the said X. Y., [*the seller of the business*], is entitled to the messuage or tenement and shop, numbered ——, in —— street, in ——, for the residue of a term of —— years, computed from the —— day of ——, under and subject to the rent, covenants, conditions, and agreements by and in an indenture of lease, bearing date the —— day of ——, and made or expressed to be made between [*parties*], reserved and contained, and on the part of the lessee, his executors, administrators, and assigns, to be paid, observed, and performed; And is also entitled to the

BETWEEN TWO PERSONS FOR THEIR JOINT LIVES.

fixtures in the said messuage or tenement and shop, and to the goods and stock in trade in the said messuage or tenement and shop or elsewhere, and used by him in carrying on his trade or business of a ——. AND WHEREAS the said A. B. and C. D. have agreed to purchase of the said X. Y. the said messuage and fixtures at the price or sum of £——, and also the goods and stock in trade of the said X. Y., which shall be in the said messuage on the —— day of ——, at the cost price thereof, and to become copartners in the trade or business of a ——, for the time and upon the terms hereinafter expressed and contained. NOW THIS INDENTURE WITNESSETH, that for effectuating the said agreement in this behalf, and in consideration of the mutual trust and confidence which the said A. B. and C. D. have and repose in each other, each of them the said A. B. and C. D. (so far as the covenants and agreements hereinafter contained are to be observed or performed by him, his heirs, executors, or administrators), doth for himself, his heirs, executors, and administrators, covenant with the other of them, his executors and administrators, by these presents, in manner following, (that is to say):

—of the agreement to purchase the shop fixtures, and stock in trade, and to enter into copartnership.

Witnesseth mutual covenants by the intended copartners.

I. THAT they the said A. B. and C. D. shall and will become and remain copartners and joint traders in the trade or business of a —— (*a*).

To become and remain copartners.

II. THAT the said copartnership shall commence on the —— day of —— (*b*), and shall continue during the joint lives of the said A. B. and C. D. (*c*).

Term of copartnership.

III. THAT in case either of them the said A. B. and C. D. shall at any time during their joint lives be desirous that the said copartnership shall determine, and of such his desire shall give notice in writing to the other of them, or shall leave such notice at the house in which the business of the said copartnership shall for the time being be carried on, then immediately upon the expiration of six calendar months from the time of such notice having been so given

Power for either copartner to determine the copartnership at six months' notice.

(*a*) See supra, p. 370, n. (*a*). (*b*) See supra, p. 370, n. (*b*).
(*c*) See supra, p. 371, n. (*c*).

BETWEEN TWO PERSONS FOR THEIR JOINT LIVES.

or left, the said copartnership shall absolutely cease and determine.

Copartnership to be determinable on the bankruptcy, insolvency, or breach of covenant of either copartner;

IV. THAT if either of them the said A. B. and C. D. shall, at any time during their joint lives, become bankrupt or be outlawed, or become insolvent within the meaning of any act of Parliament in respect of insolvent debtors, or shall remain in prison, for debt or otherwise, for more than one calendar month at one time (*d*), or shall make, do, or execute any act, deed, matter, or thing whatsoever contrary to any of the covenants, stipulations, or agreements in these presents contained, and the other of them shall thereupon give notice in writing of his desire that the said copartnership shall forthwith cease and determine, or shall leave such notice at the house in which the business of the said copartnership shall for the time being be carried on, then immediately upon such notice being so given or left, the said copartnership shall cease and determine, but without prejudice to any remedies for the breach or non-performance of any of the covenants or agreements in these presents contained (*e*).

—and in such case one copartner may give notice of dissolution in the Gazette.

V. THAT in case the said copartnership shall be dissolved by virtue of any such notice as last aforesaid, the partner giving such notice shall be at liberty to advertise a notice of such dissolution in the London Gazette, and, if necessary, to sign the name of the other partner to such advertisement or notice of dissolution.

Firm and style.

VI. THAT the firm and style of the said copartnership

Dissolution of partnership by the bankruptcy, insolvency, outlawry, or attainder of one partner.

(*d*) Bankruptcy is a dissolution of a partnership, whether the partnership be for an indefinite time, or for a term; but it is the adjudication under the fiat, not the act of bankruptcy, which operates as a dissolution. Colly. Law of Partn., pp. 70—73, 2nd Ed. So, an assignment under the acts for the Relief of Insolvent Debtors, or a sale of the partnership effects under a separate execution against one partner, or the outlawry or the attainder for treason or felony of one partner, is a dissolution of a partnership. Colly. Law of Partn., pp. 71—74, 2nd Ed.

Breach of articles no ground for dissolution when relief can be otherwise given.

(*e*) A breach of the partnership articles is not, it seems, in the absence of an express provision, a ground for decreeing the dissolution of the partnership, unless the breach is of such a character that relief cannot be given without dissolution.

shall be ——, and that all checks, bills, notes, letters, and writings which shall be drawn, accepted, or written by or on behalf of the said copartnership shall be signed —— (*f*).

[*Insert here Articles* 5, 6, 7, 8, 9, 10, *and* 11, *from Precedent* 45, *supra, pp.* 395, 396.]

Capital,—amount and contribution of.

XIV. THAT the capital or joint stock of the said copartnership shall consist of the sum of £——, to be made up and brought into the said copartnership by the said copartners in equal moieties in manner hereinafter mentioned, (that is to say), the sum of £——, in ready money, to be brought in by the said copartners in equal moieties, (whereof £—— is intended to be paid for the purchase of the said messuage and the fixtures therein, and the remaining £—— in part purchase of the goods and stock in trade so agreed to be purchased as aforesaid), and the residue of the said capital or sum of £—— to be made up by the joint promissory notes of the said A. B. and C. D., to be dated on the —— day of ——, and to be made payable at three, six, nine, twelve, fifteen and eighteen months respectively, and which it is intended shall be given to the said X. Y. in payment of the residue of the purchase-money of the said goods and stock in trade.

Capital may be increased in equal shares—if one partner bring in more than the other, the excess to be a partnership debt.

XV. THAT the capital of the said copartnership may, from time to time, and at any time, be increased as the said A. B. and C. D. shall think fit, the amount of such increase to be contributed or brought in by the said copartners in equal shares; but if either of them shall advance or bring in at any time or times any greater sum than the other of them, then and in every such case he shall be entitled to interest at the rate of £5 per cent. per annum on the sum which shall, for the time being, form the excess of his share of the said capital over the share of his copartner, and that such excess, and the interest thereon, shall be considered a debt, for the time being, due from the said copartnership, and shall be paid accordingly.

The shop to be partnership property, and

XVI. THAT the said messuage and shop shall be assigned unto the said A. B. and C. D., their executors, ad-

(*f*) See supra, p. 371, n. (*d*).

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ministrators, and assigns, as joint tenants for the residue of the said term of —— years, and the same shall be considered as and remain partnership property.

to be held in joint tenancy.

XVII. THAT the rent of the said messuage in ——, or of any house where the trade or business of the said copartnership shall, for the time being, be carried on, and the costs and expenses of obtaining a renewal of the lease of the said messuage in ——, in case the same lease shall expire during the continuance of the said copartnership, and it shall be deemed expedient to obtain a renewal of the same, and all repairs, &c. [*Ut supra, Precedent* 45, *Article* 14, *p.* 396.]

Outgoings to be paid out of the profits or capital, or by equal contribution.

Provision as to the occupation of the messuage belonging to the shop.

XVIII. THAT both of them the said A. B. and C. D. may reside in the said messuage so to be purchased as aforesaid, or in any other house at which the trade or business of the said copartnership may, for the time being, be carried on, until the marriage of one of them; but, after the marriage of either of them, one only of them, with his or her family, shall reside in the said messuage, and the said C. D. shall have the option to reside in the said messuage so to be purchased, or such other house as aforesaid, he maintaining out of his own means a separate establishment of servants, and paying such fair and rateable proportion of the rent, taxes, and all other outgoings payable in respect of the said messuage, or such other house as aforesaid, as the part of the same which shall be so occupied by him shall bear to the remaining part thereof; and in case the said C. D. shall not choose so to reside, then the said A. B. may reside in the said messuage, or such other house as aforesaid, upon the same terms as those upon which the said C. D. might have resided therein, in virtue of the stipulations hereinbefore in that behalf contained.

[*Insert here Articles* 15 *to* 28, *both inclusive, from Precedent* 45, *supra, pp.* 397—401, *adding to Article* 28, "to be divided between them at the end of every year of the said copartnership, immediately after the same shall have been ascertained by means of the general account, and rest, and valuation hereinbefore directed to be taken on the —— day of —— in every year."]

BETWEEN TWO PERSONS FOR THEIR JOINT LIVES.

XXXIII. THAT within six months after the determination of the said copartnership, by virtue of any such notice as hereinbefore is mentioned, a full and general account in writing shall be, &c. [*Provision for winding up the affairs of the copartnership as in Precedent* 45, *Article* 30, *supra*, *p.* 401.]

Provision for winding up the affairs of the copartnership on determination by notice.

XXXIV. THAT if either of them the said A. B. and C. D. shall die before the said copartnership shall have been determined by virtue of or pursuant to either of the powers for that purpose hereinbefore contained, then and in such case the survivor of them shall carry on the business of the said copartnership on the joint account of himself and the representatives of the deceased copartner for the space of twelve calendar months from the day of the death of the said deceased copartner, unless the said surviving copartner shall previously declare such option as is next hereinafter mentioned (*g*).

If one partner die during the copartnership, his representatives and the survivor to carry on the business for a certain time;

XXXV. THAT, at or before the expiration of twelve calendar months from the death of either of the said copartners as aforesaid, the survivor of them shall declare his option either to purchase the share and interest of the said deceased copartner in the stock in trade, capital, and effects of the said copartnership upon the terms hereinafter mentioned, or to allow the said stock in trade, capital, and effects of the said copartnership to be divided between himself and the representatives of the deceased copartner in manner in which the same are hereinbefore directed to be divided between the said copartners, in case the said copartnership shall be determined by notice as aforesaid; And in case such surviving copartner shall declare his option, that the said stock in trade, capital, and effects shall be so divided as aforesaid, then the same shall forthwith be so divided accordingly; and upon such division, all such acts, deeds, and things shall be made and done by the said surviving copartner, and the executors or administrators of such deceased copartner respectively, as are herein-

—and the surviving partner to have the option of purchasing the deceased partner's share, or of winding up the business upon the same terms as on a dissolution by notice.

(*g*) See supra, p. 387, n. (*o*), and see the clauses in Precedent 45, supra, pp. 402, 403.

BETWEEN TWO PERSONS FOR THEIR JOINT LIVES.

before directed to be made and done by the said copartners respectively on a division made between them during their joint lives as aforesaid.

Provision for ascertaining the value of the deceased partner's share in case the survivor declare his option to purchase it;

XXXVI. THAT in case on the death of either of the said copartners as aforesaid, the survivor of them shall declare his option to purchase the share and interest of the said deceased copartner in the stock in trade, capital, and effects of the said copartnership, then and in such case a full and true account shall be taken of all the stock, monies, debts, and effects belonging to or due or owing to the said copartnership, or due or owing from or by the said copartnership, including in such account as a debt due from the said copartnership, any excess of capital which shall have been advanced by one of the said copartners over and above the other of them; and in such account, all bad or doubtful debts due or owing to the said copartnership shall be taken at a fair valuation or amount, if deemed to be of any value, and shall be omitted or struck out if deemed to be of no value, and a fair valuation shall be made by the surviving copartner, and the executors or administrators of the deceased copartner, of the lease or leases, messuage or messuages, stock in trade, fixtures and effects of the said copartnership which shall require and be capable of valuation; (but so that in case such account shall be taken during the subsistence of the present lease, or any future lease of the said messuage and shop in ——, the same lease and the good-will of the business as connected with the same messuage or shop shall not be valued at more than £——; and they shall be valued at that sum, unless at the time of such valuation, they shall actually be of less value, but so that the provision as to limiting the amount to £—— shall not apply to any other messuage or shop, or the good-will connected therewith); and from such account and valuation the value of the share or interest of the deceased copartner, or of his representatives, in the stock in trade, capital, and property, of the said copartnership shall be duly estimated and ascertained, and the survivor of the said copartners shall purchase such share or interest at the value or price so ascertained, TO BE PAID by the sur-

—and for de-

viving copartner to the executors or administrators of the deceased copartner, (together with such debt as aforesaid, if any, as may be owing from the said business to the estate of the deceased copartner), by six equal instalments, at the end of three calendar months, six calendar months, nine calendar months, twelve calendar months, fifteen calendar months, and eighteen calendar months respectively, from the time of such value or price having been so ascertained or estimated as aforesaid; AND SHALL immediately after such value or price shall have been so ascertained or estimated, give and execute to the representatives of the deceased copartner a bond, in an adequate penal sum, for securing the payment of the said value, price, or purchase-money by the instalments, and at the periods aforesaid; AND SHALL also give and execute to the representatives of the deceased copartner another bond in a sufficient and reasonable penalty, for indemnifying the heirs, executors, and administrators; and the estate and effects of the deceased copartner from the debts due or owing from the said copartnership at the time of such decease; and of and from all actions, suits, damages, and expenses whatsoever on account of the same.

termining the mode of payment of such value by the surviving partner;

—and the security to be given for such payment;

—and the indemnity to be given against the liabilities of the partnership.

XXXVII. THAT as soon as the survivor of the said copartners shall have executed and given such bond as aforesaid, then the executors or administrators of the deceased copartner shall release and assign unto the survivor of the said copartners, his executors and administrators, All their share, right, title, and interest of, in, and to the joint stock, and estate, debts, and effects belonging, or due and owing to the said copartnership; and empower and enable him and them, as much as in them lies, to recover and receive the same. [*Arbitration clauses, supra, p.* 404]. IN WITNESS &c.

The representatives of the deceased partner to execute proper assignments, and give proper power to the surviving partner.

XLVII.

BETWEEN ATTORNIES.

ARTICLES *of* COPARTNERSHIP *between* ATTORNIES *where the* SENIOR PARTNER *is to take the* WHOLE PROFITS *during his* LIFE, *subject to the payment of certain* ANNUAL SUMS, *to his* COPARTNERS; *and after his death* ANNUITIES *are to be paid out of the Profits to his* WIFE *and* CHILDREN.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., of the first part; C. D., of &c., of the second part; and E. F., of &c., of the third part. WHEREAS the said A. B. and G. H., now of &c., for some years carried on in copartnership the profession or business of an attorney at law and solicitor, and held and enjoyed as such copartners the offices of auditor, steward, and receiver of rents for several persons, and other offices of profit of a similar nature usually exercised by attornies and solicitors: AND WHEREAS, on or about the —— day of ——, the said G. H. retired in favour of the said A. B. from the said profession, or business, and offices; and the said A. B. thereupon secured to the said G. H. the annual sum of £—— during the joint lives of them the said A. B. and G. H.; he the said G. H. covenanting with the said A. B. not to practise as an attorney at law or solicitor, nor to exercise any such offices of profit as aforesaid during their joint lives, within certain specified limits: AND WHEREAS the said A. B. hath since carried on the said profession or business, and held and enjoyed the said offices alone; and he hath lately agreed with the said C. D. and E. F. to admit them the said C. D. and E. F. into partnership in his said profession, or business, and offices, for the time and upon the terms hereinafter expressed and contained. NOW THIS INDENTURE WITNESSETH, that for effectuating the said agreement, and in consideration of the

Recital of a former copartnership between one of the intended copartners and another person;

—and of such other person having retired upon an annuity.

—of the agreement for the intended copartnership.

Witnesseth mutual covenants by the intended copartners.

BETWEEN ATTORNIES.

mutual trust and confidence which they the said A. B., C. D., and E. F., have in each other, each of them the said A. B., C. D., and E. F., (so far as the covenants and agreements hereinafter contained are to be observed or performed by him, his heirs, executors, or administrators), doth for himself, his heirs, executors, and administrators, covenant with the others of them, their executors and administrators; and also with each of the others of them, his executors and administrators, by these presents in manner following (that is to say):

To become and remain copartners.

I. THAT they the said A. B., C. D., and E. F., shall and will become, be, and remain copartners in the profession or business of an attorney and solicitor in the several courts of law and equity, including the business of conveyancing and bankruptcies, and in the offices of auditor, steward, receiver of rents, and all such other offices of profit as are usually exercised by attornies and solicitors (*a*).

Term of copartnership.

II. THAT the said copartnership shall commence as from the —— day of —— (*b*), and shall continue during the lives of the said A. B., C. D., and E. F., or any two of th em ().

Proviso for dissolution by notice at any time.

III. THAT in case the said A. B. shall at any time during his life be desirous that the said copartnership shall determine, and of such his desire shall give notice in writing to the said C. D. and E. F., or the survivor of them, or shall leave such notice at the office in which the business of the said copartnership shall for the time being be carried on; then immediately upon the expiration of three calendar months from the time of such notice having been so given or left, the said copartnership shall absolutely cease and determine.

Firm.

IV. THAT the firm and style of the said copartnership shall be —— (*d*).

Place of business.

V. THAT the business of the said copartnership shall, during the life of the said A. B., be carried on at the house

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(*a*) See supra, p. 370, n. (*a*).

(*b*) See supra, p. 370, n. (*b*).

(*c*) See supra, p. 371, n. (*c*).

(*d*) See supra, p. 371, n. (*d*).

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of the said A. B., or in or at such other convenient place as the said A. B. shall from time to time appoint, and after his decease, at such place as the said C. D. and E. F. shall hereafter determine.

Partners to attend to the business.

VI. THAT all of them the said A. B., C. D., and E. F., shall and will at all times during the continuance of the said copartnership, diligently and faithfully employ themselves in and about the profession or business of the said copartnership, and carry on, manage, and conduct the same for the greatest benefit and advantage of the said copartnership.

Partners not to act professionally, except for the copartnership.

VII. THAT neither of them the said C. D. and E. F., shall at any time during the continuance of the said copartnership act as an attorney at law or solicitor for or on behalf of any person whatsoever, or undertake any professional business whatsoever, or accept any office whatsoever usually held or enjoyed by any solicitor or attorney except for the benefit of the said partnership (*e*).

Provision as to articled clerks and their premiums.

VIII. THAT neither of them the said C. D. and E. F., shall or will during the continuance of the said copartnership take any articled clerk without the consent of the said A. B. during his life, and after his decease without the consent of the other of them, and that the said A. B. shall be entitled for his own benefit to all premiums to be paid for any articled clerks to be taken by any of the said copartners during the life of him the said A. B., and after his decease all such premiums shall be paid for the benefit of the said copartnership.

The senior partner to take the whole profits during his life, paying certain annual sums to his copartners;

IX. THAT during the life of the said A. B., he, the said A. B., shall be entitled, for his own use and benefit, to all the gains and profits arising from the said profession or business, and the several offices to be held or enjoyed by the said copartnership as aforesaid, after payment thereout of all costs, charges, losses, damages, or expenses whatsoever, to be incurred or sustained in or about carrying on the said profession or business and offices, and after allowing

(*e*) See supra, p. 372, n. (*f*).

thereout to each of them the said C. D. and E. F., the clear yearly sums following, (that is to say), during the joint lives of the said A. B. and G. H., to the said C. D. the yearly sum of £——, and to the said E. F. the yearly sum of £——, the said sums of £—— and £—— respectively, to be paid by four equal payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, the first quarterly payment thereof to be made on the —— day of —— next, and from and after the decease of the said G. H., if he shall die in the life-time of the said A. B., to the said C. D. the yearly sum of £——, and to the said E. F. the yearly sum of £——, by four equal payments in every year, the first payment thereof respectively to be made at the expiration of three calendar months from the decease of the said G. H., and the said yearly sums of £—— and £——, £—— and £——, are to be paid to the said C. D. and E. F. respectively, without any deduction or abatement for any present or future taxes, or any other matter, cause, or thing whatsoever.

—and during his life the other partners are not to interfere in money concerns.

X. THAT during the life of the said A. B., all sums of money payable by any person or persons to the said copartnership shall be paid to the said A. B. alone, or to his order and on his account, and the said C. D. and E. F. shall have no right to interfere or intermeddle with any of the money concerns of the said copartnership (except so far as they shall be commissioned or employed in the course of the said business by the said A. B. and on his account), or to call for or inspect any accounts of the receipts and profits of the said copartnership.

After the death of the senior partner, the profits to be taken by the surviving partners in equal shares, and after the death of one, wholly by the survivor;

—subject to the payment of annuities to the wife and chil-

XI. THAT from and after the decease of the said A. B., the business of the said copartnership which shall then be held or enjoyed by the said copartnership, and the gains and profits thereof respectively shall belong to and be held and enjoyed by the said C. D. and E. F., so long as they shall both live, in equal shares, and after the death of either of them, by the survivor of them, SUBJECT nevertheless to the payment by them and the survivor of them of such annual sums, and to such provision and allowance in respect of the offices of steward, auditor, and re-

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dren of the deceased partner.

ceiver of rents, or other offices of a similar nature as are hereinafter respectively contained, (that is to say), In case C. B., the wife of the said A. B., shall be living at the time of his decease, she, the said C. B., is to receive and be allowed the yearly sum of £——, during the joint lives of herself and the survivor of them, the said C. D. and E. F., to be paid to her by four equal payments in every year, the first payment thereof to be made at the expiration of three calendar months from the decease of the said A. B.; And in case there shall be any child or children of the said A. B. living at the decease of the survivor of them, the said A. B. and C. B., then the yearly sum of £—— to be paid and allowed by the said C. D, and E. F., and the survivor of them, unto and among all and every or such one or more exclusively of the other or others of the child or children of the said A. B. during the lives or life of such children or child, and the lives and life of the survivors and survivor of them, if more than one (provided the said C. D. and E. F. shall so long live), in such shares and proportions if more than one, and with such benefit of survivorship or limitations over to any other or others of them, and with such restrictions and in such manner as the said A. B. by any deed or by will or codicil shall direct or appoint, and in default of such direction or appointment, and so far as no such direction or appointment shall extend, the same yearly sum of £——, to be paid to and amongst all and every the children and child of the said A. B. living at the decease of the survivor of them, the said A. B. and C. B., and the survivors and survivor of such children, if more than one, so long as any one of such children and either of them the said C. D. and E. F. shall be living, and the same to be equally divided between or among such children so long as more than one shall be living; and if there shall be but one such child, or after the number of such children shall be reduced to one, then the whole to be paid to such one child so long as such child and the said C. D. and E. F., or the survivor of them shall live, the first quarterly payment of the said sum of £——, to be made at the expiration of three calendar months from the decease of the

survivor of them the said A. B. and C. B., and such respective sums provided for the wife and children of the said A. B. respectively as aforesaid, to be paid without any deduction or abatement whatsoever (*f*).

The son of the senior partner, after his death, to have a share of the profits of certain offices.

XII. THAT if D. B., the son of the said A. B., shall be living at the decease of the said A. B., the said D. B. shall be entitled to receive during his life one-fourth of all the salaries and clear profits to arise from all such stewardships, auditorships, and receiverships, or other offices of a similar nature as at the decease of the said A. B. shall be held or enjoyed by the said A. B., C. D., and E. F., or by any of them, he the said D. B. assisting in collecting rents and discharging such other duties as may be attached to such stewardships, auditorships, receiverships, or other offices; but the said D. B. is not to have any share in the said business of an attorney or solicitor, or any other business of what kind soever belonging to the said copartnership, except the salaries and emoluments of such offices as aforesaid; But the same business is (subject to the payment of such annual sums as hereinbefore mentioned and provided for the wife and children of the said A. B.) to be and become, at the decease of the said A. B., the exclusive property of the said C. D. and E. F., and the survivor of them.

[*Insert here Articles 22 and 24 from Precedent 44, supra, pp. 376, 377.*]

Books of account to be kept.

XV. THAT after the decease of the said A. B., they the said C. D. and E. F. shall and will, during the continuance of the said copartnership, keep proper books of account, and enter therein accounts of all monies expended and received, and debts due to and from, and of all other matters and things relating to the said copartnership; and the

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Provision out of the profits of an attorney's or proctor's business for the wife or children of a deceased partner not illegal.

(*f*) These provisions for the wife and children of the attorney are not in contravention of the statute 22 Geo. 2, c. 46, sect. 11, prohibiting attornies from acting as agents or otherwise for unqualified persons. *Candler* v. *Candler*, Jac. 225. Similar provisions in the case of the wives and children of proctors are expressly protected by the stat. 53 Geo. 3, 3. 127, s. 8.

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same books, together with all letters, specialties, securities, papers, and writings relating to and concerning the said copartnership business, shall at all times, during the continuance of the said copartnership, remain in some convenient part of the office or place where the said copartnership business shall, for the time being, be carried on, and each of them shall at all times have free access thereto and full power to peruse or copy the same, or any of them, or any part thereof (*g*).

And annual accounts taken and signed.

XVI. THAT at the end of twelve calendar months from the day of the death of the said A. B., and on the same day in every succeeding year during the continuance of the said copartnership, a full and general account and rest in writing shall be taken by the said C. D. and E. F. of all monies, debts, and effects, being in, or due, or belonging to the said copartnership, and of all debts and sums of money due and owing thereby or on account thereof; and also of all such other matters and things as are usually comprehended in accounts of the like nature, taken by persons engaged in the practice and profession of an attorney at law and solicitor; and the said account or rest shall, from time to time, be written into two books, and be signed by each of them the said C. D. and E. F. within three calendar months after the time appointed for taking thereof respectively; and, after such signature, each of them the said C. D. and E. F. shall take one of the said books into his custody, and shall be bound or concluded by every such account respectively, save and except, that if any manifest error shall be found therein within twelve months after the same shall have been so signed by both of them the said C. D. and E. F., and shall be signified by either of the said parties to the other of them, then and in such case such error shall be rectified (*h*).

Arrears of profits at the death of the senior partner to be-

XVII. THAT, upon the decease of the said A. B., all the outstanding debts and effects of the said copartnership shall belong to and be collected, got in, and received by the

(*g*) See supra, p. 378, n. (*k*). (*h*) See supra, p. 379, n. (*e*).

executors, administrators, or assigns of the said A. B., subject only to the payment and satisfaction of the then debts and liabilities of the said copartnership, and of the arrears (if any) of the said annual sums of money hereinbefore provided for the said C. D. and E. F. respectively as aforesaid.

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long to his executors, subject to payment of outgoings.

XVIII. THAT, upon the death of the said A. B., the said C. D. and E. F., if they shall both survive the said A. B., shall advance, in equal shares, such sum of money as shall constitute a sufficient capital for carrying on the said profession or business, and the same shall continue to be employed for that purpose so long as the said C. D. and E. F. shall both live; and, after the death of either of them, the share of the deceased partner in such capital shall be paid to his executors or administrators by the surviving partner at the expiration of —— calendar months next after such decease, with interest from the time of such decease at the rate of £—— per cent. per annum (*i*). [*Arbitration clauses, supra, p. 390, et seq.*] IN WITNESS &c.

On the death of the senior partner, the surviving partners to advance, in equal shares, the capital required to carry on the business, with provision for repayment on the death of one.

Arbitration clauses.

(*i*) See in the preceding forms examples of the clauses which are usually inserted to meet the event of the death of one partner during the continuance of the copartnership, and of the provisions commonly made for winding up the affairs of the copartnership on its dissolution by effluxion of time or otherwise.

XLVIII.

DEED *of* DISSOLUTION *of* COPARTNERSHIP *as to* ONE *of* THREE COPARTNERS.

DISSOLUTION OF COPARTNERSHIP.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*retiring partner*], of the one part; and C. D., of &c., and E. F., of &c., [*continuing partners*], of the other part. WHEREAS, from the —— day of ——, up to the —— day of —— last, the said A. B., C. D., and E. F., carried on the

Parties.

Recital that the copartners have carried on business in copart-

DISSOLUTION OF CO-PARTNERSHIP.

—of the partnership, pursuant to certain articles;

business of bankers in copartnership under the firm of —— at —— aforesaid, pursuant to certain articles of copartnership, bearing date the —— day of ——, and made between the said A. B., of the first part; the said C. D., of the second part; and the said E. F., of the third part; by which articles the said A. B., C. D., and E. F., bound themselves (subject to certain provisions with respect to the withdrawal of the said A. B. at the expiration of three years, or any subsequent period) to carry on the business of bankers in copartnership under the firm of —— at —— aforesaid, for the space of twenty-one years from the said —— day of ——, upon the terms in the said articles specified, dividing the profits of the business as follows, (that is to say), during the first three years, the said C. D. and E. F., taking out £—— per annum each, and the amount of their respective house-rents and taxes, and the said A. B. taking the remainder of such profits; and after the expiration of the said three years, the said A. B. was to take out one-half, and the said C. D. and E. F. one-fourth each of such profits: AND WHEREAS the said A. B., C. D., and E. F., have agreed that the said copartnership shall be dissolved from the day of the date of these presents, so far as relates to the said A. B.; and that the said A. B. shall wholly withdraw from the said business, and that the same shall henceforth be carried on by the said C. D. and E. F., and that a notice to be signed by all of them the said A. B., C. D., and E. F., of the dissolution of the said copartnership as to the said A. B., shall be inserted in the London Gazette immediately after the execution of these presents (*a*): AND WHEREAS an account

—of the agreement for dissolution;

—of an account

Notice of dissolution of partnership to be inserted in the Gazette.

(*a*) Where a partner whose name has appeared to the world retires from the firm, he must give notice of his retirement, for otherwise he will be liable for the contracts entered into by the firm after his retirement. What is sufficient notice of retirement has been the subject of much litigation; (Colly. Law of Partn., Bk. III., Ch. 3, Sect. 3, p. 368, 2nd Ed.); but there is no question, that in all cases notice of such dissolution ought to be inserted in the London Gazette, as being the place in which such notices are usually inserted, and consequently looked for. (Colly. p. 369). A provision is sometimes inserted in partnership-deeds empowering one

DISSOLUTION OF CO-PARTNERSHIP.

hath been stated and settled by and between the said A. B., C. D., and E. F., of all the debts and effects due or owing or belonging to the said copartnership on the day of the date of these presents, and of all the present outstanding bills or notes, and other debts or engagements of the said copartnership: AND WHEREAS the respective shares of the said A. B., C. D., and E. F., of and in the net gains and profits of the said copartnership up to the day of the date of these presents, have been paid to or received by them respectively; and all allowances for house-rents and taxes which the said A. B., C. D., and E. F., respectively have become entitled to under the said articles up to the day of the date of these presents, have also been paid to or received by them respectively: AND WHEREAS, on the treaty for such dissolution of copartnership, it was agreed that the said C. D. and E. F. should, by their joint and several bond or obligation, in the penal sum of £——, indemnify the said A. B., his heirs, executors, and administrators, and his and their estates and effects of and from the bills and notes of the said bank then in circulation, and all the other debts and engagements of the said copartnership in manner hereinafter mentioned; and that the said A. B. should in manner hereinafter mentioned, release and assign unto the said C. D. and E. F. all his share, right, title, and interest, of, in, and to the debts, monies, and effects belonging, or due or owing to the said copartnership; and empower and enable them, as much as in him lies, to recover and receive the same; And that the said A. B., and the said C. D. and E. F. should give and execute such mutual releases as are hereinafter contained: AND WHEREAS in pursuance of the said agreement in that behalf, the said C. D. and E. F. have this day executed and given to the said A. B. their joint and several bond or obligation bearing even date with these presents in the penal sum of £——, with a condition thereunder

of the affairs of the copartnership having been stated and settled;

—of the profits already made having been duly divided;

—of the arrangements entered into on the dissolution, and to be effectuated by the present deed;

—of bond of indemnity against the liabilities of the partnership from the continuing partners

partner, on a compulsory dissolution by the misconduct of his copartner, to sign the name of such copartner to the notice of dissolution; see supra, p. 406.

DISSOLUTION OF CO-PARTNERSHIP.

to the retiring partner.

written for making void the same, if the said C. D. and E. F., or either of them, their or either of their heirs, executors or administrators shall and do pay or cause to be paid all and every the bills or notes of the said bank now in circulation, and all and every other the debt and debts, sum and sums of money due and owing from or by the said A. B., C. D., and E. F., in respect of the said copartnership, and fulfil and perform all other the engagements whatsoever of the said copartnership to which the said A. B., C. D., and E. F., or their respective heirs, executors, or administrators, or any of them, are, or is, or shall be liable on account of the same copartnership, and shall and do, save, defend, keep harmless and indemnified the said A. B., his heirs, executors, and administrators, and his and their estates and effects, of, from, and against all losses, damages, costs, charges, and expenses whatsoever, for or by reason or means of the non-payment or non-performance of any of the said bills, notes, debts, sums of money, or engagements, or of any act, deed, matter, or thing in anywise relating thereto (*b*).

Witnesseth dissolution of co-partnership.

NOW THIS INDENTURE WITNESSETH, that for effectuating the said agreement in this behalf, and in consideration of the premises they the said A. B., C. D., and E. F., do with mutual consent by these presents, determine and dissolve the aforesaid copartnership and joint trade, so far as relates to the said A. B., from the day of the date of these presents.

Witnesseth further assignment by retiring partner of his share in the partnership property.

AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the premises, he, the said A. B., doth by these presents remise, release, assign, and confirm unto the said C. D. and E. F., their executors and administrators, all the part, share, and proportion of him the said A. B., of and in all and singular the monies, debts, bills, notes, bonds, and other securities for money, chattels, and effects whatsoever, belonging, due, or owing to them the said A. B., C. D., and E. F., as copartners, or in re-

(*b*) See ante, Vol. 3, p. 389, n. (*l*); see, too, the recent case of *Collinge* v. *Heywood*, 1 Per. & Dav. 502.

spect of the said copartnership; AND ALL THE ESTATE, &c.; TO HAVE, HOLD, RECEIVE, take, and enjoy the same unto the said C. D. and E. F., their executors, administrators, and assigns, to and for their own proper use and benefit, AND FOR the better and more effectually receiving and getting in the said several debts, monies, effects, and premises, and every or any of them, He, the said A. B., doth by these presents make, constitute and appoint the said C. D. and E. F., and each of them, their and each of their executors and administrators, and any other person or persons whom the said C. D. and E. F., or either of them, or their or either of their executors and administrators shall nominate as their or his substitute or substitutes, jointly and severally, the true and lawful attornies and attorney of him the said A. B., in the name of him the said A. B. or otherwise, but for the proper use and benefit of them the said C. D. and E. F., their executors and administrators, to demand, call in, and receive the same several debts, monies, effects, and premises, of and from all and every the persons and person liable or intrusted to pay or deliver the same respectively, and to use, take, and prosecute every or any lawful or equitable method, course, or expedient for recovering, receiving, and getting in the same debts, monies, effects, and premises, or any part or parts thereof respectively, and to give effectual receipts and discharges for the same, and to sign the name of the said A. B. to every or any bill or note, the indorsement or acceptance of which, by the said A. B., shall be necessary or convenient (*c*); and to do, or cause to be done, every or any other matter or thing necessary or convenient in or about the same premises, and that in as full, ample, and beneficial a manner to all intents and purposes as he

DISSOLUTION OF COPARTNERSHIP.

Habendum to continuing partners.

Power of attorney.

(*c*) The authority to endorse bills may be given by parol, and where the retired partner had stated that he left the assets and securities of the firm in the hands of the continuing partner for the purpose of winding up the concern, and that he had no objection to his using the partnership name: it was held, that the continuing partner had authority to indorse promissory notes so left in his hands in the partnership name. *Smith* v. *Winter*, 4 Mee. & Wels. 454. See further, ante, Vol. 3, page 385, n. (*h*).

Authority to continuing partner to indorse bills in the partnership name.

DISSOLUTION OF CO-PARTNERSHIP.

the said A. B. might have done in case the said copartnership had not been dissolved, and these presents had not been made and executed, or as if the said A. B. was present and did the same (*d*); AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and E. F., their executors, administrators, and assigns, in manner following, (that is to say), that he, the said A. B., hath not at any time heretofore contracted any debt or debts, or become bound, bail, or security, or otherwise engaged or obliged to pay any debt or debts, or sum or sums of money, which can or may charge or affect the debts, monies, or effects of the said late copartnership, or any of them, or any part or parts thereof, or for the payment whereof the said C. D. and E. F., or either of them, their or either of their executors or administrators, may be subject or liable to be sued or prosecuted in any court of law or equity whatsoever, except such debts as are entered in the books of the said late copartnership: AND THAT he the said A. B. hath not at any time assigned, released, discharged, or received any of the said debts, or done any other act whereby the same, or any part thereof, may be discharged or incumbered in anywise howsoever; AND THAT he the said A. B., his executors or administrators, shall and will justify and allow, ratify and confirm all and whatsoever the said C. D. and E. F., or either of them, their or either of their executors, administrators, or assigns, or any of them, or their or any of their substitute or substitutes shall lawfully do, or cause to be done, in or about the premises, AND SHALL and will from time to time, and at all times hereafter, at the request and costs and charges of the said C. D. and E. F., or either of them,

Covenants by retiring partner;

—against incumbrances;

—and that he has not released any of the partnership debts;

—and will confirm the acts of the retiring partners;

—and for further assurance;

Power of attorney for valuable consideration irrevocable.

(*d*) A power of attorney to receive debts assigned for valuable consideration is not revocable except by the death of the principal. Ante, Vol. 3, p. 384 n. (*f*). As to the effect of the lunacy of the principal, see *Ex parte Bradbury*, 4 Dea. 202.

As to the general authority implied by a power of attorney, see ante, Vol. 3, p. 384, n. (*g*).

DISSOLUTION OF CO-PARTNERSHIP.

their or either of their executors, administrators, or assigns, make, do, and execute all or any such further and other acts, deeds, matters, and things for the further and better empowering and enabling the said C. D. and E. F., their executors, administrators, or assigns, to recover, receive, and get in all or any of the said monies, debts, and effects of or belonging to the said late copartnership for their own proper use and benefit, as by the said C. D. and E. F., or either of them, their or either of their executors, administrators, or assigns, or their or any of their counsel in the law, shall be lawfully and reasonably devised and required: AND MOREOVER, that he the said A. B., his executors or administrators, shall not nor will revoke or make void any of the powers or authorities hereby given to the said C. D. and E. F., or either of them, their or either of their executors or administrators, or their or any of their substitute or substitutes; nor compound, release, discharge, or receive any of the debts or effects of or belonging to the said late copartnership; nor compound, release, disavow, avoid, or become nonsuit in any action or suit which may be brought, commenced, or prosecuted for or in respect of the same, or any part thereof; nor do any act or thing whereby, or by means whereof, the recovery of the same premises, or any part thereof, may be impeded, delayed, or prevented; nor interfere or intermeddle in the same premises further or otherwise than the said C. D. and E. F., their executors, administrators, or assigns, shall direct or require; AND THE SAID C. D. and E. F. do hereby, for themselves, their heirs, executors, and administrators, and each of them doth hereby, for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors and administrators, that they the said C. D. and E. F., or one of them, their or one of their heirs, executors, or administrators, shall and will, with all convenient speed, well and truly pay or cause to be paid all and every the bills or notes of the said bank now in circulation; and all and every other the debt and debts, and sum and sums of money due and owing from or by the said late copartnership, or all or any of them the said parties hereto in respect thereof, and which appear in the books or accounts of the said late copartnership; and fulfil and per-

—and not to revoke power or release debts.

Covenants by the continuing partner to pay the partnership debts.

DISSOLUTION OF CO-PARTNERSHIP.

form all other the engagements whatsoever of the said late copartnership, or to which the said parties, or their respective heirs, executors, or administrators, or any of them, are, is, or shall be liable on account of the said copartnership: AND SHALL AND WILL save, defend, keep harmless and indemnified the said A. B., his heirs, executors, and administrators, and his and their estates and effects, of, from, and against all losses, damages, costs, charges, and expenses whatsoever, which shall, or may, or otherwise might be sustained, or incurred, or become payable for or by reason or means of the non-payment or non-performance of any of the said bills, notes, debts, sums of money, or engagements, or in anywise relating thereto; or for or by reason of any action or suit, or actions or suits, or other proceeding or proceedings which shall or may be brought, or prosecuted, or used, by virtue of, or under any power or authority hereby given, or in pursuance hereof to be given to the said C. D. and E. F., or either of them, their or either of their executors, administrators, or assigns, or their or any of their substitute or substitutes (*e*); AND

Mutual releases between the partners.

THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, they the said C. D. and E. F. do, and each of them doth by these presents acquit, release, and discharge the said A. B., his heirs, executors, and administrators; and the said A. B. doth by these presents acquit, release, and discharge the said C. D. and E. F., and each of them, their and each of their heirs, executors, administrators, and assigns, of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, either at law or in equity, for or by reason or on account of the said articles of copartnership of the —— day of ——, or any clause, covenant, matter, or thing therein contained; or for or by reason of any act, deed, matter, or thing whatsoever in anywise relating to the said copartnership, or to the premises. IN WITNESS &c.

(*e*) There ought, perhaps, to be a provision in this deed to the effect, that the retiring partner shall not be entitled to require payment of the debts until he is damnified by the non-payment. See the form, ante, Vol. 3, p. 389, and the note (*l*); see, too, the late case of *Collinge* v. *Heywood*, 1 Per. & Dav. 502.

COMPOSITION DEEDS.

General observations.

THE following Precedents of Composition Deeds, (except Precedent 49), have already appeared in very nearly the same shape in the Appendix to the recent work of Mr. Forsyth on Composition with Creditors *. A few observations on the law relating to the subject, will be found ante, Vol. 1, art. COMPOSITION DEEDS, and a full view of it may be obtained from Mr. Forsyth's useful treatise.

* A Treatise on the Law Relating to Composition with Creditors, by William Forsyth, of the Inner Temple, Esq., M.A., Barrister at Law, 1841.

XLIX.

CONVEYANCE OF REAL ESTATE, AND A PENSION, IN TRUST TO SELL AND PAY DEBTS AND ANNUITIES.

CONVEYANCE *and* ASSIGNMENT *of* FREEHOLDS, LEASEHOLDS, *and* COPYHOLDS, *and of a* PENSION (*a*) *to Trustees upon* TRUST, *to* SELL *and apply the Purchase-Money in* PAYMENT *of* DEBTS, *and in the* PURCHASE *of a* JOINTURE, RENT-CHARGE, *and of* ANNUITIES.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*grantor*], of the first part; C. D., of &c., [*a cre-*

Validity of an assignment of pensions, military pay, official salaries, &c.

(*a*) The pension referred to, was a pension for past services, and might therefore be aliened, although a pension for supporting the grantee in the performance of future duties is inalienable. *Davis* v. *The Duke of Marlborough*, 1 Swanst. 74, 79; Dyer. 2 a: *Ex parte Battine*, 4 B. & Ad. 690. The half-pay of an officer, which is in the nature of a retainer for future services, cannot be assigned; *Flarty* v. *Odlum*, 3 T. R. 681; *Lidderdale* v. *The Duke of Montrose*, 4 T. R. 248; *Stone* v. *Lidderdale*, 3 Anstr. 533; nor à fortiori his full pay; *Barwick* v. *Reade*, 1 H. Bl. 627; nor the salary of the assistant parliamentary counsel to the Treasury; *Cooper* v. *Reilly*, 2 Sim. 560; *S. C.* 1 Russ. & My. 560; nor the compensation granted to a public officer on the reduction of the offices in his department under the 4 & 5 Will. 4, c. 24; *Wells* v. *Foster*, 8 Mee. & Wels. 149. See, too, *Priddy* v. *Rose*, 3 Mer. 86; *M'Carthy* v. *Goold*, 1 Ball & Beatt. 389. Military prize when captured is capable of being assigned by the captor before any interest in it has been vested in him by a grant from the crown; *Alexander* v. *The Duke of Wellington*, 2 Russ. & My. 35; and an assignment of the profits of a canonry of Windsor is valid. *Grenfell* v. *The Dean and Canons of Windsor*, 2 Beav. 544. The sale of any office connected with the administration of justice is expressly prohibited by the stat. 5 & 6 Edw. 6, c. 16; and it has been decided that the clerkship of the peace is an office within the intent of the statute; *Palmer* v. *Bate*, 2 Brod. & Bing. 673: *S. C.* 6 Moore, 28; see, too, *Palmer* v. *Vaughan*, 3 Swanst. 173. But the office of clerk to the deputy registrar of the Prerogative Court of Canterbury is not within the statute; nor is the assignment of the profits of that office otherwise invalid. *Aston* v. *Gwinnell*, 3 You. & Jer. 136.

ditor], of the second part; and E. F., of &c., G. H., of &c., and I. K., of &c., [*trustees*], of the third part. WHEREAS the said A. B. is seised and possessed of or entitled to considerable freehold, copyhold, and leasehold estates in England, Ireland, and Wales, or some or one of them, subject to a jointure rent-charge to X. Y. during her life; and also subject to several mortgages and annuities, or other charges subsisting on or affecting the same premises, or some part or parts thereof respectively: AND WHEREAS the said A. B. is possessed of or entitled to a pension or annual sum of £——, granted to him during his life by ——, subject to the said mortgages and annuities or other charges, or some of them: AND WHEREAS, (besides the said mortgages and annuities, or other charges affecting the said estates and pension of the said A. B., or some of them, as aforesaid, and for which he the said A. B. is personally bound by bonds or other specialties), the said A. B. hath granted or become bound to pay to, or for the benefit of, or in trust for several persons, certain annuities to a considerable amount, which are not at present charged or effectually charged upon the said estates, or any of them, or the said pension; And the said A. B. is also indebted to several persons by bonds and other specialties in several sums of money which are not at present charged on his said estates or pension, and is also indebted to several persons by simple contract: AND WHEREAS the said A. B. is desirous of making provision for the payment and discharge of the principal monies charged upon the said estates, or otherwise due or owing by him the said A. B., as hereinbefore is mentioned, and the interest for the same; and also for the repurchase of the several annuities charged upon the said estates, or otherwise granted or secured by him the said A. B., as hereinbefore is mentioned; and for the payment and discharge of all arrears and future payments of the same annuities respectively, until such repurchase thereof respectively; and in order thereto, hath agreed to make and execute such conveyances and assignments, and to enter into such covenants, as are hereinafter mentioned and contained: AND WHEREAS the said C. D., for better enabling the said A. B. to effect

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Recital that the grantor is seised and possessed (subject to a jointure rent-charge, mortgages, and annuities), of freeholds, copyholds, and leaseholds;

—and of a pension;

—that he has granted annuities not charged on his estates;

—and is indebted by specialty and by simple contract;

—that he desires to make provision for the discharge of these debts, annuities, and incumbrances;

—that C. D. has advanced a sum of money

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the purpose aforesaid, and in consideration of his having agreed to make and execute such conveyances and assignments, and to enter into such covenants as are hereinafter contained, and for other good causes and considerations, hath, immediately before the execution of these presents, paid and advanced the sum of £—— to the said E. F., G. H., and I. K., to be by them applied upon and for the trusts, intents, and purposes hereinafter expressed, declared, and contained, of or concerning the same. NOW THIS INDENTURE WITNESSETH, that, for effectuating the said desire, and in pursuance of the said agreement, and in consideration of the premises, he the said A. B., with the privity and approbation of the said C. D., (testified by his being a party to and executing these presents), doth by these presents (made in pursuance of an act, &c., *supra*, *p.* 266), grant, release, and confirm unto the said E. F., G. H., and I. K., and their heirs, ALL and singular the manors or lordships, or reputed manors or lordships, messuages, towns, lands, tenements, and other hereditaments, situate, lying, and being in any county or place, counties or places in England, Ireland, and Wales, or any of them, or elsewhere, of or to which the said A. B., or any person or persons in trust for him, is or are seised or entitled for any estate of freehold and inheritance in possession, reversion, remainder, or expectancy; TOGETHER with all and singular the rights, members, easements, and appurtenances to the said hereditaments, or any of them belonging or in anywise appertaining: or with the same, or any of them, now or at any time heretofore demised, leased, held, used, occupied, or enjoyed or accepted, reputed, deemed, taken, or known, as part, parcel, or member of them, or any of them; AND ALL THE ESTATE, &c., (except, nevertheless, out of this present conveyance, such estates as the said A. B. hath contracted to sell to any person or persons), TO HAVE AND TO HOLD the said manors or lordships, or reputed manors or lordships, messuages, towns, lands, tenements, hereditaments; and all and singular other the premises hereinbefore granted and released, or expressed and intended so to be, (subject to such mortgages, annuities, and other charges or incumbrances as

to the trustees, to be applied as after mentioned.

Witnesseth conveyance to trustees;

—of all the grantor's freehold estates of inheritance.

Habendum on the trusts to be after declared.

CONVEYANCE OF REAL ESTATE, AND A PENSION, IN TRUST TO SELL AND PAY DEBTS AND ANNUITIES.

are subsisting on or affecting the same premises respectively), unto the said E. F., G. H., and I. K., their heirs and assigns, To the use of the said E. F., G. H., and I K., their heirs and assigns for ever, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained, of or concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, for the further effectuating the said desire, and in further pursuance of the said agreement, and in consideration of the premises, he the said A. B., with the privity and approbation of the said C. D., (testified as aforesaid), doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., and their heirs, by these presents, that he the said A. B., or his heirs, shall and will, at or before the next courts to be holden in and for the several manors respectively, of which the said copyhold or customary hereditaments hereinafter mentioned or referred to are respectively holden, at the costs and charges of the trust estate, well and effectually surrender, or cause and procure to be surrendered into the hands of the lords or ladies of the same manors respectively, and according to the customs thereof respectively, ALL and singular the copyhold or customary messuages, lands, tenements, and other hereditaments, situate, lying, and being in England, Ireland, and Wales, or any of them, or elsewhere, of or to which he the said A. B., or any other person or persons in trust for him, is or are in anywise seised or entitled in possession, reversion, remainder, or expectancy, or otherwise howsoever; TOGETHER with the rights, easements, and appurtenances, &c. [*as in the last page*], TO THE USE of the said E. F., G. H., and I. K., their heirs, and assigns, to be holden according to the customs of the said manors respectively, by and under the rents, fines, heriots, suits, and services therefore respectively due, andf right accustomed, and upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and

Witnesseth further, covenant by the grantor to surrender

—all his copyhold estates;

To the use of the trustees, upon the trusts to be after declared.

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contained of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the said desire, and in further pursuance of the said agreement, and in consideration of the premises, he the said A. B., with the privity and approbation of the said C. D., (testified as aforesaid), doth, by these presents, (made, so far as is requisite, in pursuance of an act, &c., *supra, p.* 266), grant, release, assign, and confirm unto the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns respectively, according to the nature and quality thereof respectively, ALL and singular the manors or lordships, or reputed manors or lordships, messuages, towns, lands, tenements, and other hereditaments, situate, lying, and being in England, Ireland, and Wales, or any of them, or elsewhere, of or to which he the said A. B., or any person or persons in trust for him, is or are in anywise seised, possessed, or entitled under any lease or leases, or otherwise howsoever, for the life or lives of any person or persons, or for any term or number of years, either absolute or determinable on any life or lives, or otherwise; TOGETHER with all and singular the rights, members, easements, and appurtenances, &c. [*ut supra, p.* 430]; AND ALL THE ESTATE, &c. (except, nevertheless, out of this present conveyance such of the same premises as the said A. B. hath contracted to sell to any person or persons); TO HAVE AND TO HOLD all such and so many and such part and parts of the said manors or lordships, or reputed manors or lordships, messuages, towns, lands, tenements, hereditaments, and premises hereinbefore released and assigned, or expressed and intended so to be, as are holden for any life or lives, (subject to the mortgages, annuities, and other charges or incumbrances now subsisting thereon, or affecting the same respectively), unto and to the use of the said E. F., G. H., and I. K., their heirs and assigns, for and during the respective lives of the persons for whose lives respectively the same premises are respectively holden; AND TO HAVE AND TO HOLD all such and so many, and such part and parts of the said manors, or reputed manors, messuages,

Witnesseth further, conveyance and assignment to the trustees;

—of all the grantor's leasehold estates.

Habendum, as to the freehold part, to the trustees and their heirs;

—and as to the chattel part, to the trustees, their executors,

towns, lands, tenements, hereditaments, and premises hereinbefore released and assigned, or expressed and intended so to be, as are holden for any term or terms of years (subject to the mortgages, annuities, and other charges or incumbrances now subsisting thereon, or affecting the same respectively), unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, for the residue now to come of the terms for which the same premises respectively are now holden; Together with all benefit or right of renewal thereof respectively; Nevertheless, as to all and singular the premises hereinbefore released and assigned, or expressed and intended so to be, UPON TRUST, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall, by and out of the rents, profits, and annual produce thereof, pay the rents and annual sums reserved in and by the leases thereof respectively, and observe and perform the covenants and conditions in the said leases respectively contained, and on the part of the several lessees, or their respective executors, administrators, or assigns, to be observed or performed; AND DO AND SHALL (if they the said trustees or trustee for the time being shall think fit so to do), from time to time, as occasion shall require in the ordinary course of renewal, use their and his best endeavours to obtain, on the accustomed reasonable terms, a renewed lease or leases of such of the said leasehold premises as shall be held for a lease or leases ordinarily renewable; and do and shall, from time to time, make, do, and execute all such surrenders, acts, deeds, matters, and things, as shall be requisite or expedient for obtaining such renewals (*b*); AND SUBJECT THERETO, do and shall stand and be seised and possessed of and interested in the said leasehold hereditaments and premises, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes,

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and administrators.

Upon trust to pay the rents, and perform the covenants;

—and renew, if necessary;

—and subject thereto upon the trusts to be after declared.

(*b*) As to the proper trusts for the renewal of leaseholds, see ante, Vol. 4, p. 347, n. (*f*), p. 350, n. (*g*), and p. 351, n. (*h*).

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agreements, and declarations hereinafter expressed, declared, and contained, of or concerning the same: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, to raise any money which shall be required for the renewal of any such lease as aforesaid, by mortgage of the hereditaments to be taken by renewal as aforesaid, and to make all such assurances, and do all such other acts as shall be necessary or expedient for the purpose of effectuating any such mortgage; and no mortgagee advancing money upon any mortgage, purporting to be made under this power, shall be bound to see that such money is wanted, or that no more than is wanted is raised (*c*).

Power to raise money by mortgage, for the renewal of leases.

AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the said desire, and in further pursuance of the said agreement, and in consideration of the premises, he the said A. B., with the privity and approbation of the said C. D. (testified as aforesaid), doth, by these presents, assign unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, ALL THAT the said pension or annual sum of £——, granted to the said A. B. by the said ——, and all the accruing payments of the same pension or annual sum (*d*); AND ALL THE ESTATE, &c.; TOGETHER with full power and authority to ask, demand, sue for, recover and receive, and give effectual receipts and discharges for the said pension or annual sum, and all accruing payments thereof, or any part thereof, in the name of him the said A. B., his executors or administrators, TO HAVE, HOLD, RECEIVE, AND TAKE the said pension or annual sum, and all and singular other the premises lastly hereinbefore assigned or expressed, and intended so to be, (subject to the mortgages, annuities, and other charges or incumbrances now subsisting thereon or

Witnesseth further, assignment to the trustees;

—of the pension;

—with power to receive and sue for the same.

Habendum on trusts to be afterwards declared.

(*c*) See ante, Vol. 4, p. 350, n. (*g*).

(*d*) See supra, p. 428, n. (*a*).

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affecting the same), unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, upon and for the trusts, intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained, of or concerning the same: AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns respectively, shall stand and be seised and possessed of and interested in the said freehold, copyhold, and leasehold hereditaments and premises, and pension or annual sum hereinbefore released, covenanted to be surrendered and assigned respectively, or expressed and intended so to be, UPON TRUST, that they the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall, as soon as conveniently may be, absolutely sell and dispose of the said freehold, copyhold, and leasehold hereditaments and premises and pension, either entirely and altogether or in parcels, and either by public auction or private contract, and either freed and discharged from or subject to the mortgages, annuities, and other charges or incumbrances affecting the same, for such price or prices, or sum or sums of money, as the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators respectively of such survivor, shall think reasonable, with power to buy in the said premises, or any part thereof, at any sale or sales by auction, and to rescind, abandon, or vary any contract for sale, and to resell the premises which shall be so bought in, or the contract for the sale of which shall be so rescinded or abandoned as aforesaid, without being in anywise answerable for any loss which may happen thereby respectively, and also with power to insert any special or other stipulations in any contract for or conditions of sale, either as to title or evidence of title, or otherwise, and with power to enter into, make, execute, do, and perform all such contracts, agreements, conveyances, assurances, acts, deeds, matters, and things, as to them the said E. F., G. H., and

Declaration that the trustees shall hold all the property in trust for sale;

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I. K., or the survivors or survivor of them, or the heirs, executors, or administrators respectively of such survivor, shall seem meet: AND DO AND SHALL stand and be possessed of and interested in the purchase-money to arise from the sale or sales aforesaid, (after payment thereout of the expenses attending such sale or sales respectively), and also of and in the rents, issues, and profits of the said freehold, copyhold, and leasehold hereditaments, and the accruing payments of the said pension or annual sum, in the mean time and until the same respectively shall be sold, (but without prejudice to the provisions hereinbefore contained for payment of the rents to become payable in respect of the said leasehold premises respectively, and for renewal of the leases thereof respectively), UPON TRUST, that they the said E. F., G. H., and I. K, and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, do and shall, in the first place, by, with, and out of the same, pay, discharge, and satisfy the charges and incumbrances affecting the said hereditaments and premises hereinbefore released, covenanted to be surrendered and assigned respectively, or expressed and intended so to be, (including the monies to become payable for the renewal of any lease or leases under the provision in that behalf hereinbefore contained, and the monies to become payable under the provision hereinafter in that behalf contained, or otherwise, for the repurchase of the said jointure rent-charge, or for the repurchase of any annuity or annuities now charged upon the same premises respectively, or any of them), according to their respective priorities of charge, and so far as the same respectively ought to have preference or priority as specific charges or liens on the same premises respectively, but not further or otherwise: AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that the said E. F., G. H., and I. K, and the survivors and survivor of them, and the executors and administrators of such survivor, shall stand and be possessed of and interested in the surplus or residue which shall remain after answering and satisfying the trusts and purposes aforesaid of the monies to arise from such

—and to apply the purchase money;

—in discharge of the rent-charge, mortgages, annuities, and incumbrances specifically charged, in due order.

Declaration, that the trustees shall apply the money advanced by C. D., and the surplus of the monies to arise from the sales, in

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sale or sales as aforesaid, and of the said rents, issues, and profits, and accruing payments of the said pension or annual sum of £——; and also of and in the said sum of £—— so advanced and paid by the said C. D. to the said E. F., G. H., and I. K., as hereinbefore is mentioned, UPON TRUST that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor do and shall in the first place, by and out of the same, pay and satisfy all the costs, charges, and expenses of preparing, engrossing, and executing this present indenture, or in anywise relating thereto; and also retain to and reimburse themselves and himself all costs, charges, and expenses which they or any of them shall or may sustain, incur, or be put unto in or about the execution of the trusts hereby created, other than the costs and charges attending such sale or sales as aforesaid, and which are to be paid, in the first place, out of the money to arise from such sale or sales respectively as is hereinbefore provided; AND DO AND SHALL, in the next place, pay and apply the same in or towards payment of all such, and so many and such part and parts of the debts and sums of money now due or owing by the said A. B., to any person or persons, and the interest due and to grow due for such of the same debts or sums of money as carry interest, and of the monies which shall become payable under the provision hereinafter contained for the repurchase of any annuity or annuities granted or secured by the said A. B., and the interest thereof respectively; and of the arrears and growing payments of the same annuities respectively, until the same respectively shall be repurchased, as shall not have been paid or satified under the trust or direction hereinbefore contained for paying or satisfying the charges, liens, or incumbrances affecting the hereditaments and premises which shall be so respectively sold as aforesaid, such payment to be made pari passu, without any preference or priority; AND DO AND SHALL stand and be possessed of and interested in all the surplus or residue (if any) which shall remain of the said trust monies respectively, after answering and satisfying the trusts and purposes aforesaid, In trust for the

payment of costs;

—and in discharge of the debts and annuities not specifically charged;

—and shall pay the surplus to the grantor.

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said A. B., his executors and administrators, as part or his personal estate: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, to pay or allow any debt or debts, and sum or sums of money claimed from the said A. B., upon any evidence the said trustees or trustee for the time being shall think proper; and to pay or allow such interest upon the said debts and sums of money, or any of them, as they or he shall think proper; and to adjust, settle, submit to arbitration, compromise, or compound any debt or debts owing by, or any claims or demands upon the said A. B., in such manner and upon such terms as to the said trustees or trustee for the time being shall seem meet: PROVIDED ADWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, or administrators of such survivor, to purchase the said jointure rent-charge, for such sum of money as they or he shall think fit; and to repurchase any annuity or annuities granted or secured by the said A. B., either at the price or prices stipulated or agreed upon for such repurchase in the original grant or grants of such annuity or annuities respectively, or for such other price or prices as to the said trustees or trustee for the time being shall seem meet; and to allow such interest upon the price or prices for the repurchase of any such annuity or annuities as to them or him shall seem expedient: AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors and administrators of such survivor, to allow of any annuity or annuities granted or secured by the said A. B. before the execution of these presents, and to repurchase the same, and pay and satisfy any arrears or future payments thereof, notwithstanding any informality or defect whatsoever in any security or securities for the

Trustees to allow debts and claims on such evidence as they may think proper, and to adjust and compromise at discretion.

Power to purchase the rent-charge and annuities.

Power to allow annuities notwithstanding defects in the securities.

same respectively: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful for the said A. B., his executors or administrators, at any time or times hereafter, by any deed or deeds, instrument or instruments in writing, to order and direct that any annuity or annuities granted or secured by him the said A. B. before the execution of these presents, and not at present charged, or effectually charged, upon any of the said estates hereinbefore granted and released, and covenanted to be surrendered and assigned respectively, shall be taken and considered (subject and without prejudice to the charges and incumbrances now affecting the same estates and premises respectively) to have been specifically charged upon all the said estates and premises respectively at the time or respective times of granting or securing the same annuity or annuities respectively; And then and in every such case (subject and without prejudice as aforesaid) the money to become payable for the repurchase of such annuity or annuities respectively under the treaty or provisions hereinbefore declared and contained, and for the arrears and future payments thereof until such repurchase, shall be paid in such order, with such priority, and in such manner in all respects under the trusts hereinbefore declared, as if the same annuity or annuities respectively had been specifically charged on the said estates and premises respectively at the time or respective times of the granting thereof respectively(*e*). [*Power to grant leases for twenty-one years, ante, Vol. 4, p. 351. Trustees' receipt clause, ante, Vol. 4, p. 352 (f). Clauses for the indemnity of the trustees, ante, Vol. 4, pp. 326, 329.*] IN WITNESS &c.

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Power to the grantor to direct that annuities not specifically charged shall be considered to have been specifically charged from the date of their grant.

Usual clauses.

(*e*) In trust deeds of this nature is often inserted a proviso that no creditor shall, by means of the trust, obtain any fresh lien or charge beyond what he previously possessed; but although, as a matter of caution, such a clause may be desirable, it does not seem to be essential. See the form of such a clause, ante, Vol. 4, p. 648, and the note (*h*).

Propriety of proviso that creditors shall obtain no fresh lien.

(*f*) The deed, it will be observed, contains no provision for the appointment of new trustees, but although such a clause may not be imme-

Trustee clauses in deeds, for

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ASSIGNMENT IN TRUST FOR CREDITORS.

ASSIGNMENT *by a* TRADER *of his* ENTIRE PERSONAL ESTATE *in trust for his* CREDITORS (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*trader*], of the first part; E. F., of &c., and G. H., of &c. [*trustees*], of the second part; and THE SEVERAL OTHER PERSONS whose names and seals are hereunto subscribed and set, being severally creditors in their own right or in copartnership, or being agents or attornies of creditors of the said A. B., of the third part: WHEREAS

Recital of the

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the benefit of creditors who are not parties.

diately necessary, as all the persons interested are competent to concur in any new appointment, yet it is obvious that some of them may die, or become incompetent before the trusts are fully performed; and it would seem therefore that the usual provision should be inserted. See the form, ante, Vol. 4, p. 324; see, too, Vol. 3, p. 294, if the power of appointing new trustees is to be given (as in such cases, perhaps, it should be) to the surviving or continuing trustee.

The clause for the payment of the trustees' expenses is omitted, as being rendered superfluous by the trust, supra, p. 437.

Assignment by a trader of all his property, an act of bankruptcy.

(*a*) It must be borne in mind, that the execution by a trader of an assignment of all his property and effects, or of all, with a merely colourable exception (even for the benefit of all his creditors), constitutes an act of bankruptcy. But if, in conformity with the statute 6 Geo. 4, c. 16, s. 4, the assignment be by deed, and for the benefit of all creditors, and be executed by every trustee within fifteen days after the execution by the trader, and the execution by the trader and each trustee be attested by an attorney or solicitor, and such notice in the Gazette and elsewhere be given, as is prescribed by the statute, (*for the form see the next Precedent*), the execution of the deed is not an act of bankruptcy, unless a fiat issue within six calendar months from the execution by the trader. Forsyth on the Law of Composition with Creditors, p. 5, Ch. xi. pp. 127 et seq. See, too, *Ex parte Tealdi*, 1 M., D. & Deg. 210: *Cattell* v. *Corrall*, 4 You. & Coll. 228: *Porter* v. *Walker*, 1 Mann. & Gran. 686.

ASSIGNMENT IN TRUST FOR CREDITORS.

the said A. B. is indebted unto the said E. F. and G. H., and unto the several other persons whose names and seals are hereunto subscribed and set, or their respective principals, in the several sums of money set opposite their respective names, in the schedule hereunder written or hereunto annexed, and, being unable to pay the same in full, has agreed, in order to satisfy them as far as he is able, to assign all and singular his personal estate and effects (except as hereinafter is mentioned), unto the said E. F. and G. H., their executors, administrators, and assigns, in manner hereinafter mentioned, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained: AND WHEREAS, upon the treaty for such assignment, it was agreed that the said E. F. and G. H., and the said several persons, parties hereto of the third part, should give and execute to the said A. B. such release as is hereinafter contained, NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, he, the said A. B., doth by these presents assign unto the said E. F. and G. H., their executors, administrators, and assigns, ALL AND EVERY the stock in trade, goods, wares, and merchandize, household furniture, plate, linen, china, books of account, book and other debts, sum and sums of money, and all securities for money, shares, rights, and interests, and all other the personal estate and effects whatsoever and wheresoever, of him the said A. B., in possession, reversion, expectancy, or otherwise, (except the wearing apparel of the said A. B., and of his wife and children, and except leaseholds held at rack-rent) (*b*); To-

trader's being indebted, and having agreed to assign his personal estate to trustees upon the trusts of the present deed;

—of the agreement that the creditors of the trader should release him.

Witnesseth assignment by the trader to the trustees of all his personal estate,

—with powers

(*b*) Leaseholds at rack-rent are sometimes excepted from general assignments of a trader's property, in order that the trustees may not be incumbered with burdensome leases. It was, indeed, laid down by Lord Tenterden, at Nisi Prius, that the assignees under a composition deed are in the same situation as the assignees of a bankrupt, *i. e.* are not bound to take a burdensome lease, or any other property which they may deem injurious to the creditors, and may repudiate it as soon as they have ascertained its value. (*Carter* v. *Warne*, Mood. & Malk. 479). The

Exception of leaseholds from general assignments of trader's property.

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GETHER WITH full and free power and right of entry in and to all and every the messuages or tenements and hereditaments wherein the said goods, wares, merchandizes, household furniture, books of account, effects, and premises, or any of them, now are or hereafter shall be: AND ALL THE ESTATE, right, title, interest, possession, property, claim, and demand whatsoever, both at law and in equity, of him the said A. B., of, in, to, out of, or upon the said premises, or any of them, or any part thereof; TO HAVE AND TO HOLD the said stock in trade, goods, wares, and merchandize, household furniture, plate, linen, china, books of account, debts, sum and sums of money, and securities for money, shares and interests, personal estate and effects, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, UPON TRUST, that they, the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall forthwith, or as soon as circumstances will allow, take possession of, call in, collect, compel payment of, and receive all and singular the said premises hereinbefore assigned, or expressed and intended so to be: AND do and shall, as soon as conveniently may be, sell and dispose of and convert into money such parts thereof as shall not consist of money, with power for the said trustees or trustee for the time being to accept any composition for any debts or monies owing to the said A. B., and to allow time for the payment of any of the said debts, monies, or compositions, and that either with or without taking security for the same, and with power also for the said trustees

for obtaining possession.

And all the estate, &c.

Habendum to the trustees.

Upon trust to obtain possession;

—and convert into money;

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correctness of this decision may, however, be doubted, as the privilege of the bankrupt's assignees depends on an express legislative provision. See *How* v. *Kennett*, 3 Ad. & Ell. 659. The same statute too, (6 Geo. 4, c. 16), which gives the assignees the power of repudiating the lease, enables the bankrupt to discharge himself from all liability, by delivering up the lease to the lessor; but if the trustees of a composition deed are exempted from taking a lease, the bankrupt remains liable to the rent and covenants after he has parted with the means of meeting his liabilities.

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or trustee for the time being to make any such sale, disposition, or conversion into money as aforesaid, either by public auction or private contract, and either allowing any time or times for payment of the whole or any part of the purchase-monies, and either with or without taking security for the same, and generally upon and under such terms and conditions, and at such times and in such manner in every respect as to the said trustees or trustee for the time being shall seem meet: AND do and shall, by and out of the monies to arise from such taking possession, calling in, collecting, compelling payment, receiving, sale, disposition, and conversion into money as aforesaid, pay the costs, charges, and expenses of preparing, engrossing, and executing these presents, and of such taking possession, calling in, collection, compelling payment, receiving, sale, disposition, and conversion into money as aforesaid, And all other the costs, charges, or expenses to be incurred or become payable in or about the execution of the trusts of these presents, or in respect of the premises: AND do and shall pay and divide the clear residue of the said monies unto and among all and singular the creditors of the said A. B., in ratable portions, according to the amount of their several and respective debts, subject, nevertheless, to the covenants and provisoes hereinafter contained: AND THE SAID A. B. doth, by these presents, make, ordain, constitute, and appoint the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, their or his assigns, to be the true and lawful attornies or attorney of him the said A. B., to ask, demand, sue for, recover, and receive all debts and monies due, or owing, or payable to him the said A. B., and all and singular other the trust-premises hereinbefore assigned or expressed, or intended so to be, or any of them, which may be in the possession of any person or persons other than the said A. B., and on payment or delivery thereof, or of any part thereof respectively, to give and execute effectual receipts, acquittances, or other discharges for the same respectively, and on non-payment or non-delivery thereof respectively, to bring and commence, and either carry on and prosecute, or discontinue and abandon any ac-

—and pay costs and expenses;

—and divide the net residue ratably among the creditors.

Power of attorney from the trader to the trustees to recover debts and choses in action.

ASSIGNMENT IN TRUST FOR CREDITORS.

tion, suit, or other proceedings whatsoever, for recovering and compelling the delivery or payment thereof respectively, and for all or any of the purposes aforesaid, to use the name or names of the said A. B., his executors or administrators, and whatsoever the said attorney or attornies shall lawfully do or cause to be done, in or about the premises, he, the said A. B., doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators, to allow, ratify, and confirm (*c*): AND IT IS HEREBY AGREED and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, to return to or allow the said A. B. to retain such part of his household furniture, plate, linen, and china, as the said trustees or trustee for the time being may think fit: AND THAT it shall be lawful for the said trustees or trustee for the time being, to employ the said A. B., or any other person or persons, in winding up the affairs of the said A. B., and in collecting, getting in and disposing of the estate, effects, and premises hereinbefore assigned, or expressed or intended so to be, or any of them, or any part thereof, or otherwise in or about the premises, and to make any remuneration or payment out of the trust estate to the said A. B., or other the person or persons who may be so employed, which the said trustees or trustee for the time being may think fit: AND IT IS HEREBY FURTHER AGREED and declared between and by the said parties to these presents, that any of them the said several persons, parties hereto of the third part, shall and will at any time, if called upon so to do by the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, make a solemn declaration before a magistrate, or Master in Chancery, of the truth and justice of the debt claimed by them respectively, or

Power to the trustees to return the trader any part of his household furniture, &c.;

—and to employ him as their agent in conducting any of the affairs of the trust.

Proviso, that any creditor not making a proper declaration as to the truth of his debt, shall forfeit all dividends under the trust;

(*c*) There is a distinction between the power to give receipts under a power of attorney, and under the common trustees' receipt clause. See ante, Vol. 4, p. 393.

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their or any of their partner or partners, before he or they shall be entitled to claim any dividend or benefit under these presents in respect of such debt; and that in the event of any such person, after being so called upon, refusing or neglecting to make such declaration as aforesaid, such person shall lose all dividends, benefit, and advantage to be derived from or otherwise claimed under these presents, any thing herein contained to the contrary notwithstanding: AND THAT it shall be lawful for the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, to pay such last-mentioned dividends, and the dividends of any other creditors or creditor refusing or neglecting to take the benefit of the provision hereby made, unto the said A. B.: AND IT IS HEREBY FURTHER AGREED and declared between and by the parties to these presents, that it shall be lawful for the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, to pay in full, or make such arrangement with the creditors whose debts are under ten pounds, or any of them, as the said trustees or trustee for the time being may think fit: AND THAT whenever the monies which shall have come to the hands of the said trustees or trustee for the time being under the trusts aforesaid, shall amount to fifty pounds or upwards, the amount thereof shall be paid into the banking-house of Messrs. ——, in the names or name of the said trustees or trustee for the time being: PROVIDED ALWAYS, that any person or persons who at the date of these presents shall be a surety, or liable in any manner for any debt of the said A. B., shall and may, after payment by him of the same debt, or of any part thereof, stand in the place of the person to whom the same debt was owing, for the whole or such part of the debt as shall have been paid, in respect of the trusts and benefit of these presents, notwithstanding the same may be so paid and discharged after the date and execution hereof; and the dividend or dividends thereafter payable in respect of the amount of such debt or liability, shall be paid to such person or persons as in case of bankruptcy, but not so as to disturb any prior dividend or divi-

—and such dividends, and those of any creditor not taking the benefit of the trust, may be paid to the trader.

Power to the trustees to make any arrangement as to the payment of debts less than £10.

When monies received amount to a given sum, the same to be paid into a bank.

Proviso that sureties for the trader may, on paying the debt, stand in the place of the creditor paid.

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dends (*d*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, or of the trustee or trustees for the time being acting in the execution of the trusts of these presents, for any sum or sums of money payable as the purchase-money of any of the said premises or otherwise, under or by virtue of these presents, or in the execution of the trusts hereof, shall be a sufficient and effectual discharge, or sufficient and effectual discharges for the same respectively, or for so much thereof respectively as in such receipt or receipts shall be expressed or acknowledged to be received, and that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication, or be in anywise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received (*e*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said trustees hereinbefore named, or either of them, or any trustee or trustees to be appointed as hereinafter mentioned, shall die or be absent from this kingdom more than three calendar months at one time, or be desirous of being discharged of and from, or refuse or decline, or become incapable to act in the aforesaid trusts before the same shall be fully executed, then and so often as the same shall happen, it shall be lawful for the surviving or continuing trustees or trustee for the time being (and for this purpose any trustee or trustees retiring from or declining to act in the aforesaid trusts, shall, if willing to act in the exercise of this present power, be considered a continuing trustee or continuing trustees), or for the executors or administrators of the last

Trustees' receipts to be discharges.

Power of appointing new trustees.

(*d*) See the statute 6 Geo. 4, c. 16, s. 52; see too, *Ex parte Coplestone*, 4 Dea. 54.

(*e*) See supra, p. 444, n. (*c*).

surviving or continuing trustee for the time being, from time to time to appoint any other person to be a trustee or trustees in the stead of the trustee or trustees so dying or being absent from this kingdom, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid, and that upon every such appointment the said trust estates, monies, and premises shall be assigned and transferred in such manner and so that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees, or solely, as the case may require, and every such new trustee shall have the same powers as if he or they had been originally named a trustee or trustees in these presents (*f*). PROVIDED ALSO, and it is hereby further agreed and declared between and by the parties to these presents, that the trustees or trustee for the time being of these presents, shall not be answerable the one for the other of them, and by no means for involuntary losses. AND ALSO, that it shall be lawful for the said trustees or trustee for the time being to reimburse themselves or himself, out of the monies which shall come to their or his hands by virtue of the trusts aforesaid, all their costs and expenses to be incurred in or about the execution of the aforesaid trusts (*g*). AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the assignment hereinbefore contained, they the said E. F. and G. H., and the said several persons parties hereto, of the third part, do respectively hereby acquit, release, and discharge the said A. B., his heirs, executors, and administrators, of and from all and singular the debts, sums of money, bills, bonds, notes, accounts, reckonings, costs, charges, damages, expenses, judgments, executions, actions, suits, claims, and demands whatsoever, either at law or in

ASSIGNMENT IN TRUST FOR CREDITORS.

Proviso for the indemnity of trustees;

—and payment of their expenses.

Witnesseth further, release by the creditors to the trader, of their respective claims.

(*f*) Trusts of this kind are generally of such short duration, that the provision for the appointment of new trustees is omitted, as unnecessary: but the form in the text occupies but little space, and may, on occasion, be of service.

Trustee clauses usually omitted in composition deeds.

(*g*) There is, of course, no objection to the insertion of the ordinary clauses for the indemnity of the trustees and the payment of their expenses; see ante, Vol. 4, pp. 326, 327.

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equity which they the said several persons parties hereto, of the third part respectively, or their or any of their partner or partners respectively, now have, or shall or may, or otherwise could or might hereafter have, claim, challenge, or demand of, from, or against the said A. B., his heirs, executors, or administrators, or his or their lands or tenements, goods or chattels, estate or effects, or any of them, for or by reason or on account of the debts, securities, claims, and demands of them, or any of them respectively, due or owing from the said A. B., and set forth in the said schedule to these presents, and all interest and arrears of interest for or in respect of the same several debts and premises, or any of them, or for or by reason of any other matter, cause, or thing whatsoever relating thereto. IN WITNESS &c.

LI.

NOTICE.

NOTICE *in pursuance of the Stat.* 6 *Geo.* 4, *c.* 16, *s.* 4, *to be inserted in the* LONDON GAZETTE, *within* TWO MONTHS *after the Execution by a* TRADER *of an* ASSIGNMENT *of all his Property for the Benefit of his* CREDITORS.

Notice.

NOTICE is hereby given, that A. B., of &c., in the county of ——, linen-draper, hath, by an indenture of release and assignment, bearing date the —— day of ——, and made between the said A. B., of the one part, and C. D., of &c., auctioneer, and E. F., of &c., warehouseman, of the other part, conveyed and assigned all his real and personal estate and effects to the said C. D. and E. F., their heirs, executors, administrators, and assigns, in trust for the equal benefit of such of the creditors of the said A. B. as shall assent to and execute the said indenture of release and assignment, within two months from the date thereof. The said indenture of release and assignment was duly executed by the said A. B. on the said —— day of

——, in the presence of and attested by G. H., of &c. aforesaid, attorney at law, and I. K., his clerk, and the same indenture was duly executed by the said C. D. and E. F. on the —— day of the said month of ——, in the presence of and attested by the said G. H. and I. K. (*a*).

NOTICE.

(*a*) See supra, p. 440, n. (*a*).

LII.

CLAUSES IN DEED OF COMPOSITION WITH CREDITORS (*a*).

CLAUSES IN DEED OF COMPOSITION WITH CREDITORS.

PROVIDED ALWAYS, and it is hereby agreed and declared, that these presents, or any clause, matter, or thing herein contained, shall not extend, or be construed to extend, to invalidate, prejudice, or in any manner affect any mortgages, charges, or other specific securities or liens, which any of the creditors, parties hereto of the said [*debtors*], may have upon any of the real or personal estates of or belonging to them, or any of them, or any security for or in respect of all or any of the debts due and owing to such last-mentioned creditors respectively, or any bonds, notes, or other securities given or payable by any other persons by way of security for the same debts, or any of them; But that all such several mortgages, charges, securities, liens, and also all such bonds, bills, notes, and other securities from third persons, as aforesaid, shall be and continue as available both at law and in equity, in the hands of the several creditors, parties hereto, holding the same, to all intents and purposes, as if these presents had never been made or executed, so, nevertheless, that the same creditors do respectively de-

The specific securities of creditors not to be affected by the deed.

(*a*) The following clauses, or any of them, which the circumstances require, may be introduced into the foregoing deed, or into any deed of the same kind.

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liver true and particular accounts in writing, signed by themselves, to the trustees or trustee for the time being of or under these presents, or their or his solicitor, some time before the first dividend to be made of the said money and funds shall become distributable between all the creditors parties hereto under the trusts aforesaid, of all and singular mortgages, charges, liens, bonds, bills, notes, or other securities, by them respectively holden, for the several debts last mentioned (*b*); PROVIDED ALSO, and it is hereby further agreed and declared, that, upon every distribution of the monies and funds which shall from time to time become devisable as aforesaid, the creditors, parties hereto of the said [*debtors*], holding any such mortgages, charges, liens, bonds, bills, notes, or other securities as last mentioned, shall receive a dividend upon or in respect of so much only of their several debts as shall not be conveyed or secured thereby respectively, unless such creditors, or any of them, shall so relinquish such their respective mortgages, charges, liens, bonds, bills, notes, and other securities for the general benefit of the creditors, parties hereto of the said [*debtors*], in which case the same mortgages or other securities before specified, shall be actually delivered up or assigned as aforesaid to the trustees or trustee for the time being, of or under these presents, to be by them or him holden and applied upon the same trusts as are hereinbefore declared of and concerning the trust-monies and funds herein comprised, and the creditors so delivering up or assigning the same shall be entitled to dividends upon the whole of their respective debts; PROVIDED ALWAYS and it is hereby further agreed and declared, that it shall be lawful for the said trustees or trustee for the time being, if they or he shall so think proper, by and out of the aforesaid trust-monies and funds, at any time hereafter to pay off or discharge the whole of the debt or debts due or owing from the said [*debtors*], to any of their creditors, parties hereto, holding any such mortgages, charges, liens, bonds, bills,

Creditors holding specific securities to receive a dividend only in respect of debts for which they hold no securities, unless they give up such securities for the general benefit of the creditors.

Trustees may pay the debts of creditors holding specific securities, and take such securities for the general benefit of the creditors.

(*b*) As to the reservation of collateral securities, see Forsyth on the Law of Composition with Creditors, Ch. viii. p. 73.

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notes, or other securities, or any of them, as lastly hereinbefore are mentioned, and that either with or without interest, and thereupon to cause the same mortgages, charges, liens, bonds, bills, notes, or other securities, or any of them, to be delivered up or assigned to the same trustees or trustee, to be by them or him holden and applied upon the same trusts as are hereinbefore declared of and concerning the trust-monies and funds herein comprised; PROVIDED ALWAYS, and it is hereby further agreed and declared, that no debt owing by the said [*debtors*], or any of them respectively (except any mortgage debt or debts), to any of the several creditors, parties hereto, shall carry interest, nor shall any creditor whose debt carries interest (except any mortgage creditor or creditors), demand, or be entitled to any interest for the same, or to any allowance in respect of interest accrued after the date of these presents; PROVIDED ALSO, and it is hereby further agreed and declared, that in case these presents shall not be executed on or before the —— day of —— now next ensuing, by all and every the creditors of the said [*debtors*], and of every of them, either by themselves, or some person or persons duly authorized by them respectively in that behalf, whose debts shall amount to the sum of £—— apiece or upwards, then and in such case, these presents, and every clause, matter and thing herein contained shall cease, determine, and be void, and the said [*trustees*], or the survivor of them, his heirs, executors, or administrators respectively, shall re-convey, re-surrender, re-assure, or otherwise assure all and singular the real and personal estates herein comprised, or intended so to be, unto and to the use of the said [*debtors*] respectively, their respective heirs, executors, administrators, and assigns respectively, according to the aforesaid several tenures or legal qualities thereof, and to their several rights and interests therein at the time of the execution of these presents, in as full and ample a manner as if these presents had not been made and executed; AND THAT freed and discharged of and from all incumbrances whatsoever, to be made, done, committed, or suffered by the said [*trustees*], or any of them, their or any of their executors, administrators, or

No debt, except mortgage debts, to carry interest.

Proviso that the deed shall be void unless executed by all creditors of a certain amount by a specified day.

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assigns respectively, in the mean time; And thereupon all and every the said several creditors who shall have executed these presents, shall be in the same state and condition with respect to their said several debts, and have the like liberty and the same remedies to sue for and recover their respective debts, as they would have been in or had, in case these presents had never been made, anything herein contained to the contrary thereof notwithstanding (*c*): PROVIDED ALSO, that in the mean time, and until the said —— day of —— next, it shall be lawful for the said [*trustees*], and the survivor of them, his heirs, executors, or administrators, from and after the execution of these presents, to proceed to act in the trusts hereby reposed in them as aforesaid, for the benefit of all the said creditors of the said [*debtors*], (except as aforesaid), in case the said several creditors shall execute these presents on or before the said —— day of —— next; But if all the said creditors (except as aforesaid) shall not execute these presents within the time hereinbefore limited for that purpose, whereby the same shall become void, then in trust (after deduction and allowance of all costs, charges, and expenses on account thereof) for the said [*debtors*], their executors, administrators, and assigns respectively, according to their several rights and interests therein at the time of the execution of these presents: PROVIDED ALSO, and it is hereby further agreed and declared, that the said [*debtors*] and each of them shall, within —— days next after the execution of these presents by them, deliver in to the said trustees, or the survivor of them, or the heirs, executors, or administrators of such survivor, their or his assigns, a full and true schedule or inventory, signed by each of them the said [*debtors*], of all and singular their and each of their

Trustees may proceed in the execution of the trusts, before all the creditors have executed the deed.

Proviso that the debtors are to render a full account of their property, with remedies in the case of suppression.

Proviso in composition deed, making it void on non-execution by all the creditors.

(*c*) A composition deed ought always to contain a proviso making it void, if the creditors, or the principal part of them, do not execute within a limited time; for otherwise the debtor and the creditors who execute the deed will be bound, while the other creditors will be at liberty to pursue their legal remedies against the debtor. See the observations of Bayley, J., 4 B. & C. 512; Forsyth, Ch. vi. p. 53.

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real and personal estates and effects, rights and credits whatsoever, both present and expectant or contingent, and shall verify the same by a solemn declaration before a magistrate or Master in Chancery; And that if any such estates, effects, rights, or credits, to the amount or value of £—— or upwards, shall be suppressed or concealed by them or either of them, then and in such case such suppression or concealment shall, as to the party making the same, forthwith and of itself revoke and make void the letter of license hereinafter given to the said [*debtors*]; and also the covenant herein contained on the parts of the said several creditors, parties hereto of the second and third parts respectively, to acquit and release them in the events hereinafter expressed, of and from the several debts due and owing to them from the said [*debtors*], or either of them, but without prejudice to the trusts hereinbefore contained for the benefit of such creditors; And the same creditors, in the event of any such suppression or concealment as aforesaid, after the full performance and execution of such trusts, shall have and be entitled respectively to such and the like rights of action and other powers and remedies against them the said [*debtors*], or such of them as shall so suppress or conceal such estates, effects, rights, or credits as aforesaid, for the payment of so much and such parts of their several debts as shall not be satisfied by means of such trusts, as they would have had if these presents had not been made or executed: AND IT IS HEREBY FURTHER AGREED and declared, that a meeting shall take place of the several creditors of the said [*debtors*], parties hereto as aforesaid, either in person or by their respective agents, on the —— day of —— now next ensuing, at the hour of —— in the morning, at ——, where this present indenture and a separate schedule containing an account or list in writing of the several debts, claims, and demands owing from and made upon the said [*debtors*] to and by such creditors respectively, shall be produced and shewn for inspection; And thereupon all such of the same debts, claims, or demands, as shall not be objected to at such meeting, shall be entered opposite the respective names of the creditors,

Agreement for determining and arbitrating on the debts and claims of the creditors.

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parties hereto, of the said [*debtors*], who shall severally claim the same in the said schedule to these presents; and if at such meeting, or within twenty-one days then next ensuing, any debt, claim, or demand contained in such previous schedule shall be objected to, either in the whole or in part, by any one or more of the creditors of the said [*debtors*] then present, or their or his agent or agents, or by the said [*trustees*] or any of them, or by the said [*debtors*] or any of them, the party or parties making such objection shall, at, or within twenty-one days next after such meeting, deliver in writing unto the solicitor for the time being to the present trust a memorandum or note of the objection to such debt, claim, or demand, and also the name of some person whom he shall approve as an arbitrator or referee of and concerning the validity of such debt, claim, or demand, so objected to; and the party or parties whose debt, claim, or demand shall be so objected to, if then present, shall forthwith, or if absent, then, within the space of seven days next after he, she, or they shall respectively have received notice from the said [*solicitor of the trust*], or other the solicitor for the time being as aforesaid, name some person as an arbitrator on his, her, or their part or respective parts for the purposes aforesaid; and whatever award or determination, such arbitrators, to be chosen as aforesaid, or in case of difference between them, then the umpire to be by them appointed in writing, shall make respecting the matters referred to them or him, shall be binding, final, and conclusive upon all parties making such reference (so that such award or umpirage be made within fourteen days next after such reference shall be made as aforesaid by the parties in difference, or their arbitrators, as the case may be); And the party, or respective parties, whose debts or demands shall be objected to, shall, in case the whole thereof shall not be thereby awarded, be entitled to receive only such part or parts of such disputed debts or demands as the said arbitrators or their umpire shall adjudge or award to be due and owing to the same party or parties: AND IT IS HEREBY ALSO AGREED and declared,

Creditors not

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that if any creditor or creditors of the said [*debtors*] whose debts or demands, or respective debts and demands shall be objected to at the time and place aforesaid, and being present when such objection is made, shall refuse or neglect for the space of four days, to be computed from the said —— day of —— on which the said meeting is to be held, or if absent, shall refuse or neglect for the space of seven days after he, she, or they shall have respectively received notice of such objection to his, her, or their debt or demand, or respective debts or demands, to submit or refer the same to arbitration in manner aforesaid, such creditor or creditors so refusing or neglecting shall from thenceforth be wholly excluded from all benefits and advantages whatsoever, which he, she, or they might otherwise have had and claimed, under or by virtue of these presents: AND IT IS HEREBY FURTHER AGREED and declared, that, after the said —— day of —— next, no objection shall be admitted or allowed to be made to any of the debts contained in such previous schedule as aforesaid, but the same several debts, and every of them, shall from thenceforth be adjudged to be fair and just debts and demands, and shall accordingly be satisfied either wholly or in part by and out of the monies arising under the several trusts of these presents. AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, and upon condition, that, and during such time only as, the said [*debtors*] shall and do in all things well and truly perform, observe, and keep all and every the articles, covenants, and agreements in these presents contained on their part and behalf to be performed, observed, and kept, each of them the several persons parties hereto of the —— parts respectively, creditors as hereinbefore mentioned, doth hereby for himself and herself respectively, and for his and her several and respective heirs, executors, and administrators, so far as relates to his and her own acts, debts, and demands, covenant with the said [*debtors*], their executors and administrators in manner following (that is to say), THAT they the said several creditors parties hereto, or any of them, their or any of their several copartners, executors,

submitting disputed claims to arbitration to forfeit all benefit under the trust.

No objection to any debt to be admitted after a day specified.

Covenant by the creditors severally with the debtors;

—not to arrest or molest debtors;

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or administrators, shall not nor will at any time or times hereafter, unless and until default shall be made in performance of the covenants hereinbefore on their or some of their parts contained, or some of such covenants, sue, arrest, prosecute, or molest, or do or cause to be done any act, matter, or thing whereby or by means whereof the said [*debtors*], or any of them, their or any of their heirs, executors, or administrators, their or any of their goods, chattels, lands, or tenements, shall or may be anywise seized, arrested, prosecuted, detained, or molested, at law or in equity, or otherwise howsoever, for or in respect of any debt or debts whatsoever now due or owing unto them, or any of them, from the said [*debtors*]: AND ALSO, that they the said [*debtors*], and every of them, shall and may from time to time, and at all times hereafter, unless and until they shall make such default as aforesaid, have and be entitled to full and free liberty, license, power, and authority to go, pass, and repass to and from such place and places, and in such manner as they shall think proper, for any purpose whatsoever, without any control or interruption of or by them the said creditors, parties hereto of the —— parts respectively, or any of them, their or any of their copartners, executors, or administrators, or any person or persons by or with their or any of their order, direction, or consent: AND FURTHER, that in case the said creditors, parties hereto of the —— parts respectively, or any of them, their or any of their partners, executors, or administrators, shall sue or prosecute at law or in equity, or do, or cause to be done any act, matter, or thing whatsoever, whereby or by means whereof the said [*debtors*], or any of them, their or any of their heirs, executors, or administrators, shall or may be sued, prosecuted or molested for any such debt or debts now due as aforesaid, contrary to the foregoing covenant, and the true intent of these presents, then, and in every such case, he or they shall or may plead these presents in bar of any action or actions, suits or suit that shall or may be commenced or prosecuted against him or them, and these presents shall operate as and are hereby declared and agreed to be an effectual and absolute discharge of the

—and to allow them free liberty of action.

And the present deed to be pleaded in bar to any action or suit contrary to the foregoing covenants.

same (*d*): AND MOREOVER, that they the said creditors, parties hereto, their partners, executors, and administrators respectively, shall and will, upon full payment of their respective debts, at the request, costs, and charges of the said [*debtors*], or any of them, their, or any of their heirs, executors, or administrators, make, give, sign, and execute unto them or him good and sufficient releases, acquittances, and discharges for the several debts now due and owing to them the same several creditors respectively from the said [*debtors*] as aforesaid, and of and from all actions, claims, and demands whatsoever in respect thereof: PROVIDED ALWAYS, and it is hereby agreed and declared, that in case any one or more of them the said [*debtors*] shall have failed in the due observance and performance of all and singular the covenants and agreements hereinbefore on his or their part or parts contained, then and in such case the release and acquittance to which the other or others of them, their or his executors or administrators, shall be entitled by virtue of the covenant hereinbefore for that purpose contained, shall in nowise operate to exonerate and discharge such one or more of them the said [*debtors*] as shall make default as aforesaid, of or from the several debts or sums of money set forth in the schedule hereunto annexed, or any of them, due and owing from such one or more of them, either alone or jointly with the other or others of them, to the several creditors parties hereto of the second and third parts, or any of them respectively; But they or he shall thenceforth be wholly subject and liable to the same debts or sums of money, or such parts thereof respectively, as shall then remain unsatisfied, in such and the same manner as if the same had been solely contracted by him or them; AND IT IS HEREBY AGREED AND DECLARED, that all and every the creditors of the said [*debtors*], who shall agree to take the benefit of these presents, shall subscribe a declar-

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And that creditors on receiving payment of their debts will execute releases.

Proviso that any of the debtors failing in the performance of their covenants, shall not be exonerated by the discharge of those who have not so failed.

Agreement that the creditors shall sign an acceptance of

(*d*) The foregoing covenants constitute what is called a letter of license; see the next Precedent. See too, Forsyth on the Law of Composition with Creditors, Ch. ix. p. 92.

Letters of license.

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ation that they, and every of them, will accept their proportion of the monies to arise by the means aforesaid in full of their respective debts, and the interest thereof when the same may carry interest, to be prepared and left at the office of ——, in ——, on or before the —— day of —— next, and that such creditors so signing such declaration shall grant and execute to the said [*debtors*] a letter of license, enabling them respectively to go, pass, and repass to and from such place or places, and in such manner as they or he shall think proper for any purpose whatsoever, without any control or interruption of or by them the said several creditors, or any of them, pending the execution of the trusts of these presents (*e*): AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, they the several persons parties hereto of the —— and —— parts respectively, creditors as hereinbefore is mentioned, in respect of their several debts, claims, and demands, do, and each of them doth, by these presents remise, release, and for ever quit claim unto the said [*debtors*], their heirs, executors, and administrators, and every of them, all actions, suits, bills, bonds, and writings obligatory, debts, dues, duties, accounts, sums of money, extents, executions, claims, and demands whatsoever, both at law and in equity, or otherwise howsoever, which they respectively, or their respective executors or administrators now have or hereafter shall or may have, or otherwise could or might have, challenge, claim, or demand against the said [*debtors*], or any of them, their or any of their heirs, executors, or administrators, or their or any of their estates or effects, for or by reason or on account of the debts, claims, and demands of them the said creditors respectively, due or owing from the said [*debtors*], and set forth in the schedule hereto annexed, and all interest and arrears of interest for or in respect of the same several debts, sums of money, and premises, or any of them, or for or by reason of any other matter, cause, or thing whatsoever relating thereto, other

the composition, and grant a letter of license.

General release by the creditors to the debtors.

(*e*) See supra, p. 457, n. (*d*), and the next Precedent.

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than and except the security effected, or intended to be effected, by means of these presents, and the trust thereby declared as aforesaid (*f*): PROVIDED ALWAYS, and it is hereby further agreed, that it shall not be incumbent on the said [*trustees*], or the survivor of them, his executors or administrators, to sue for or take any steps for the recovery of the said premises hereinbefore assigned or expressed, or intended so to be, unless he or they shall think proper so to do; and that it shall be lawful for him or them to discontinue any proceedings which shall have been undertaken whenever he or they shall think fit; And that no laches or responsibility shall be imputable to or shall attach upon him or them for any act or deed whatsoever, which shall be done, executed, or directed by him or them in the exercise and execution of the trusts, powers, and authorities of these presents, or for omitting to exercise and carry into execution the same trusts, powers, and authorities, or any of them (*g*): PROVIDED ALWAYS, and it is hereby agreed and declared, that if at any time or times hereafter, during the continuance of the trusts of these presents, and while the said indenture or letter of license of even date herewith shall remain in force, the said [*debtors*], or any of them, shall be arrested or taken in execution, or other process shall be put in force against their or any of their bodies, lands, or goods, by any one or more of them, or any of their present creditors who shall refuse to come in and execute these presents and the said indenture of even date herewith, then and in every such case it shall be lawful for the said trustees hereby appointed, or the survivor of them, his executors or administrators, or other the trustees or trustee for the time being of these presents, and they and he are and is hereby directed to put in special or common bail, or enter an appearance for them the said [*debtors*], or any of them, in

Indemnity and exoneration of the trustees in respect of not taking or abandoning proceedings.

Proviso for the protection of the debtors against the proceedings of creditors not parties.

(*f*) See Forsyth on the Law of Composition with Creditors, Ch. ix. p. 92.

(*g*) With respect to the rights and liabilities of trustees of composition deeds, see Forsyth, Ch. vii. p. 60.

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every or any such action or suit, or actions or suits, at their or his discretion, or else to submit to the same; And further, to defray and satisfy out of the trust-monies arising by virtue of these presents all costs, damages, and expenses attending the defending any actions or suits now pending or to be instituted as aforesaid; And likewise all monies for which the bodies, lands, or goods of the said [*debtors*], or any of them, may be taken in execution as aforesaid, and all other costs, damages, or expenses incurred or to be awarded in any action or suit, or actions or suits at law or in equity, either pending or for which any cause subsists or may be alleged against them the said [*debtors*], or any of them, at the time of the execution of these presents.

LIII.

LETTER OF LICENSE.

LETTER OF LICENSE (*a*).

TO ALL TO WHOM these presents shall come, the several persons whose names and seals are hereunto subscribed and affixed by themselves or their respective partners, agents, or attornies, being respectively creditors of A. B., late of &c., but now of &c., severally send greeting: WHEREAS the said A. B. is indebted to the several persons aforesaid respectively, in several sums of money, which he is not at present able to pay, but which he expects he may be able to pay at the end of two years from the date of these presents. NOW THESE PRESENTS WITNESS, that, in consideration of the premises, they the

Recital of the grantee being indebted to the grantors.

Witness, grant of license, and

(*a*) A letter of license is an agreement between a debtor and his creditors, that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on his business at his own discretion. It is, however, usually accompanied by a provision, that the business shall be carried on under the inspection and control of some persons nominated by the creditors. See the next Precedent.

several persons whose names and seals are hereunto subscribed and affixed as aforesaid, do and each of them doth by these presents give and grant unto the said A. B. full, free, and perfect license and liberty to come and go, pass and repass from place to place within the United Kingdom of Great Britain and Ireland, where and as his business and occasion shall serve and require, for the term of two years from the day of the date of these presents, without being sued, molested, arrested, charged, or troubled, in his person or otherwise, for or concerning or on account of any debt, sum or sums of money, or other matter or thing whatsoever, whereby or wherewith he is or may be in anywise charged or chargeable or indebted to them the said several persons aforesaid, or any of them, or their or any of their respective partners. AND EACH of them the said several persons whose names and seals are hereunto subscribed and affixed, so far as relates to the acts and deeds of himself, and his copartners, and his and their heirs, executors, and administrators, doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors and administrators, THAT they the said several persons whose names and seals are hereunto subscribed and affixed as aforesaid, or their respective executors or administrators, partner or partners, or the executors or administrators of any such partner or partners, or any other person or persons whosoever, by, with, or through their or any of their order, consent, direction, privity, or contrivance, shall not nor will at any time hereafter, during the said term of two years from the date of these presents, sue, arrest, attach, extend, molest, implead, or trouble the said A. B., his heirs, executors, or administrators, or his or their bodies, goods, or estates for or on account of any debts, dues, or sums of money which he now owes or is indebted to the several persons aforesaid respectively, or their respective partners, either solely by himself or jointly with or for any other person or persons whomsoever, by bond, bill, or covenant, simple contract, or otherwise howsoever, or for or on account of any other cause, matter, or thing whatsoever, wherewith he or they now is or shall or may be charged or

LETTER OF LICENSE.

freedom from suit and arrest.

Covenant by the creditors with the debtor;

—not to sue, arrest, or disturb the debtor during the term of the license.

LETTER OF LICENSE.

And that the present deed may be pleaded in bar of any action or suit.

chargeable; AND THAT these presents shall and may be pleaded and allowed in any court of law or equity, as a bar and in discharge of all and every action or actions, suit or suits, or other proceedings, judgments, and executions, which shall or may be brought, commenced, sued, prosecuted, or taken against him the said A. B., his heirs, executors, or administrators, or his or their goods or estates, by the said several persons whose names and seals are hereto subscribed and affixed as aforesaid, or any of them, their or any of their heirs, executors, or administrators, partner or partners, or the executors or administrators of any such partner or partners, or any other person or persons whomsoever, by, through, or with their or any of their acts, means, privity, order, consent, or procurement, contrary to the true intent and meaning of these presents (*b*). IN WITNESS &c.

(*b*) It is not very usual to insert covenants in a deed-poll, but there is no doubt that an action of covenant may be brought on a deed-poll if the covenantee be named in the deed. *Green* v. *Horne*, Salk. 197. But covenants in an indenture entered into with persons who are not *parties*, confer no right of action on such parties. 2 Roll. Abr. 22 (F.) pl. 1. *Scuddamore* v. *Vanderstene*, 2 Inst. 673: *Gilly* v. *Copley*, 3 Lev. 138: *Cooker* v. *Child*, cited 3 Lev. 139: *Offly* v. *Ward*, cited 3 Lev. 140: *Ex parte Richardson*, 14 Ves. 187: *Metcalf* v. *Rycroft*, 6 Mau. & Sel. 75: *Gardner* v. *Lachlan*, 8 Sim. 123; S. C., 4 Myl. & Cr. 129: *Walmsley* v. *Cooper*, 3 Per. & Dav. 149.

LIV.

DEED OF INSPECTORSHIP (*a*).

DEED OF INSPECTORSHIP.

Parties.

THIS INDENTURE, made the —— day of ——, between A. B., of &c. [*insolvent*], of the first part, C. D., of

Object of a deed of inspectorship.

(*a*) A deed of inspectorship is a deed of arrangment between a debtor and his creditors, in which the creditors consent to suspend their claims for a limited time, upon condition that the debtor during that time, or until all demands have been paid, carries on his business under the inspection of persons appointed for that purpose by the creditors.

DEED OF INSPECTORSHIP.

&c., and E. F., of &c. [*inspectors*], of the second part, and THE SEVERAL PERSONS whose names and seals are hereunto set and affixed, being severally creditors in their own right or in copartnership, or being agents or attornies of creditors of the said A. B. of the third part: WHEREAS the said A. B. is indebted to the several persons parties hereto of the third part respectively, or to their respective principals, in the several sums of money set opposite to their respective names in the schedule hereunder written: AND WHEREAS, at a meeting of the creditors of the said A. B., on the —— day of —— instant, it was represented to them by the said A. B., that through various unforeseen circumstances he was unable to pay immediately all debts owing by him, but that his stock in trade, the debts owing to him, and other his estate and effects were amply sufficient for that purpose; and it was therefore agreed that the term of —— should be given to the said A. B. to collect, get in, and dispose of his said estate and effects under the inspection of the said C. D. and E. F., and according to the stipulations and agreements and in manner hereinafter mentioned and contained. NOW THIS INDENTURE witnesseth, that, in pursuance of the said agreement, and in consideration of the covenants and agreements hereinafter contained, by and on the part of the said A. B. to be performed and observed, each of them, the said several persons, parties hereto of the third part, so far as relates to his own acts and deeds, and the acts and deeds of his heirs, executors, administrators, or principals, DOTH by these presents give and grant unto the said A. B., full, free, and absolute liberty and license to conduct, manage, and wind up his trade, business, and affairs, and to collect, get in, sell, and dispose of all and every his stock in trade, estate, debts, and effects, or any part thereof, under the inspection and subject to the approbation and control of the said C. D. and E. F., until the —— day of ——, if he the said A. B. shall so long live, and continue to observe and perform the several covenants or agreements hereinafter contained, and on his part to be observed or performed, unless these presents sooner become

Recital of the insolvent being indebted;

—and of the agreement to allow him to carry on his business for a term under an inspection, in manner provided by the present deed.

Witnesseth grant of license to the debtor for a certain time to wind up his affairs under inspection;

DEED OF INSPECTORSHIP.

null and void by virtue of the provision hereinafter in that behalf contained; AND THAT they, the said several persons, parties hereto of the third part respectively, and their respective executors, administrators, partners, or principals, will not during the time aforesaid sue, arrest, prosecute, impede, or molest the said A. B. in the management of his said trade, business, or affairs, under the control and inspection aforesaid, nor seize nor possess themselves or himself of, or attach or intermeddle with his goods, estates, property, or effects, or any part thereof; AND THAT, in case any of them, the said several persons, parties hereto of the third part respectively, or the executors, administrators, partners, or principals of any of them, shall act contrary to the agreement lastly hereinbefore contained, the said A. B., his heirs, executors, and administrators shall be, and he and they is and are hereby thenceforth and for ever acquitted, exonerated, and discharged of and from all and every the debts, claims, and demands which are or is due and owing to the person or persons who, or whose partners or principals shall act contrary to the said agreement, and all actions, suits, and proceedings to be had or taken for or in respect of the same, and that, in every such case, this present letter of license and agreement may be pleaded in release of and in bar to all and every such debts, claims, demands, actions, suits and proceedings, as effectually and beneficially as if a release or acquittance for the same had been given under the hand and seal, or hands and seals of the person or persons who, or whose partners or principals shall act contrary to the said agreement; AND THE SAID A. B., in consideration of the license and privilege so hereby given to him as aforesaid, doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and E. F., their executors and administrators, and also with each of the several persons parties hereto of the third part, his executors and administrators, in manner following, namely, THAT HE THE SAID A. B. will, when requested by the said C. D. and E. F., or either of them, make out and fairly state in writing, a true and exact account of all and singular his debts, credits, claims, demands, estate, property, and effects, and

—free from molestation by the creditors;

And in case of molestation by any creditor, the debt of such creditor to be ipso facto released.

Covenant by the debtor with the creditors;

—to deliver statement of his affairs to the inspectors;

DEED OF INSPECTORSHIP.

of the several charges, outgoings, liens, and incumbrances upon or affecting the same respectively, and deliver the same, or a fair copy thereof, unto each of them, the said C. D. and E. F; AND THAT he, the said A. B., will at all times hereafter, during the time hereinbefore given him for that purpose as aforesaid, use and employ his best endeavours, under and subject to the direction and advice of them the said C. D. and E. F., to collect and get in the estate, property, debts, and effects of him the said A. B., for the benefit of his said creditors, and from time to time, when any monies shall be received by him sufficient to pay five shillings in the pound, upon or in respect of the said debts of his said several creditors, will pay and distribute the same unto and amongst them his said creditors, their respective executors, administrators, and assigns, ratably and in proportion to the amount of their said respective debts, and so from time to time, until the whole amount of the same debts shall be fully paid off and discharged, and in the mean time, and until the same monies shall be so paid and distributed, will from time to time place or deposit the same for safe custody in the hands of Messrs. ——, Bankers, at ——, in the joint names of them the said A. B., C. D., and E. F., or otherwise dispose thereof as they the said C. D. and E. F. shall direct, subject only to the proviso and agreement next hereinafter contained; PROVIDED ALWAYS, and it is hereby agreed, that the said A. B. may (so long as he shall observe and perform the matters and things herein contained on his part to be performed and observed) retain out of his said estate, trade, or business, the monthly sum of —— pounds, for the maintenance of himself and family, and that the said A. B., out of the monies which he shall from time to time receive, may pay all rents and taxes, law charges, and expenses, and salaries, and allowances for clerks and others employed in the said trade, and the charges and expenses to be incurred in getting in and disposing of his said estate and effects, in pursuance of these presents; AND MAY THEN pay and fully satisfy all such and so many of his present creditors, whose respective debts do not exceed the sum of fifty pounds, and

—and under their direction to get in and dispose of his assets, and from time to time to pay his creditors.

Power to the debtor to retain a monthly sum for his own expenses, and to pay all necessary expenses;

—and all debts under 50*l.*

DEED OF INSPECTORSHIP.

all who will agree to accept of that sum in full of their respective debts or demands; AND THAT, if any dividend shall be made of the estate and effects of the said A. B. before all his said several creditors, by themselves or their attornies or agents shall have executed or otherwise acceded to these presents, the said A. B. may retain the ratable dividends of every such creditor or creditors, and pay the same to him and them respectively, upon his or their respectively so executing or acceding to these presents, and, in default of any such dividend being so retained, may pay to such creditor or creditors, upon his or their respectively executing or acceding to these presents, a ratable dividend or dividends in proportion to the amount of his or their respective debt or debts out of any future proceeds of his estate and effects, and before any further dividend or payment shall be made to or amongst any of the other creditors, but so that no dividend then already made shall be disturbed: AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, further covenant with the said C. D. and E. F., their executors and administrators, and with each of the several persons, parties hereto of the third part, and his executors and administrators, that he the said A. B., his executors or administrators will not at any time hereafter convey, assign, alien, dispose of, or in any manner charge or incumber, or cause or procure, or knowingly suffer to be conveyed, assigned, aliened, disposed of, or in anywise charged or incumbered all or any part of his goods, estate, property, or effects, whether real or personal, and whether in possession, reversion, or expectancy, or otherwise howsoever, without the consent in writing of the said C. D. and E. F., and will not do, or cause, or procure, or knowingly permit or suffer to be done or committed any act, matter, or thing, whereby any of the creditors of him the said A. B. shall or may obtain or have any further or other security or securities for his, her, or their debt or debts, than that or those which they respectively have at the time of the execution of these presents, or whereby any of the said creditors shall have or receive a greater or prior security or advantage in or concerning his or their debt or debts than

—with power to retain dividends for creditors who may not have executed before the same are payable.

Covenant by debtor not to alien or charge any part of his estate without the consent of the inspectors, and not to give any security or preference to any creditor;

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the other or others of them, save only and except those of the said creditors whose debts do not respectively exceed fifty pounds, or who will accept of that sum in full payment thereof as aforesaid: AND FURTHER, that he the said A. B., until all his said creditors shall be fully paid and satisfied their respective debts and demands, will not, either alone, or with any other person or persons, undertake or become engaged in any new or other trade, concern, or business, nor enter into any speculation, or doubtful or uncertain contract, nor contract any new or other debts (other than in the due and regular course of his present trade or business, and with a view only to winding up the same), nor become bound, bail, or surety for any person or persons, without the consent in writing of the said C. D. and E. F.: AND FURTHER, that he the said A. B. will at all times hereafter, until his said debts shall be fully paid and satisfied, keep or cause to be kept proper books of account relating to his said business, affairs, estate, and effects, and make, or cause to be made therein true and proper entries of all receipts, payments, disbursements, and outgoings, and of all other transactions, matters, and things whatsoever concerning the same, as is usual with merchants and traders in general, or which shall be requisite or proper to elucidate or show forth the state and condition of his said business, affairs, estate, and effects in a clear and satisfactory manner in all respects: AND ALSO, will from time to time, and at all and any reasonable time and times, permit and suffer them the said C. D. and E. F., and each of them, at their and his own will and pleasure, to inspect and examine the same books of account, and all other books, papers, and writings in the custody or power of the said A. B. relating to his said business, affairs, estate, and effects; and to copy or make extracts from the same, or any of them: AND ALSO will, at the end of every month or oftener, if required by the C. D. and E. F., or either of them, make and report to them in writing an abstract or general statement of the receipts and payments, and other transactions and proceedings relative to his said business, affairs, estate, and effects, up to the end of the month then next preceding the time of such

—and not to enter into any fresh business or engagements without the consent of the inspectors;

—and to keep proper accounts;

—and to allow the inspectors to examine them;

—and when required to furnish the inspectors with general statements.

DEED OF INSPECTORSHIP.

report or statement: AND IT IS HEREBY FURTHER DECLARED AND AGREED by and between the parties to these presents, that, for effecting the purposes aforesaid, the said C. D. and E. F. may nominate and appoint one or more clerk or clerks, or other person or persons to assist the said A. B. in the management, disposal, and collection of his said trade, estate, and effects, at such salary or wages as they shall think proper; and may, also, do, order, direct, and assent to all and every or any such other acts, matters, and things whatsoever, relative to the premises aforesaid, as they in their discretion shall think expedient: AND THAT, if the said A. B., or his estate or effects, or any part thereof, shall be arrested, taken in execution, attached, or otherwise molested by any of his creditors, they the said C. D. and E. F., or either of them, may, and are, and is hereby authorized to bail the said A. B., and contest the debt or debts of such creditor or creditors, or adopt such other proceeding or proceedings in reference thereto as they shall be advised, at the expense of the estate and effects of the said A. B., and shall be repaid and reimbursed thereout by him accordingly: AND THAT, if by reason of any unforeseen cause, not wilfully occasioned by the said A. B., any delay shall take place in the final settlement of his affairs, so as to prevent his said several creditors from receiving the full amount of their respective debts at or before the expiration of the said term of ——, then and in such case the said C. D. and E. F. may, and they are hereby fully authorized, if they shall think proper, without any further consent of the said creditors of the said A. B. than is hereby given, to prolong or extend the said term of —— hereinbefore given for winding up the affairs of the said A. B., and for payment of his creditors in manner aforesaid, for the further space of ——, to be computed from the expiration of the said first-mentioned term of ——; and that thereupon an indorsement under the hands of the said C. D. and E. F. being made upon the presents to that effect, all and every the said persons, parties hereto of the third part, their heirs, executors, partners, principals, and assigns, shall continue and be bound by the covenants, pro-

Power for the inspector to appoint persons to assist in winding up the affairs, and to direct the same generally;

—and if A. B. or his estate be attached, to bail him, and take proper proceedings;

—and that, if desirable, inspectors may extend the time for winding up the debtor's affairs.

visoes, declarations, and agreements herein contained in favour of him the said A. B. in the same, and in as full and complete a manner for such further period of ——, to all intents and purposes, as if the said two several terms of —— and —— had been originally in and by these presents given for that purpose: AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with each of the said several persons, parties hereto of the third part, his executors and administrators, that he the said A. B., his heirs, executors, or administrators, will pay or cause to be paid unto all and every of his said creditors, their respective executors, administrators, or assigns, their full respective debts and demands before the expiration of the said term of ——, or other the extended term aforesaid (if any), in the manner and proportions hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents: AND FURTHER, that if at any time during the said term of ——, or such extended term as aforesaid (if any), the said trade, business, or concern of the said A. B. shall, in the judgment and opinion of the said C. D. and E. F., have become or be likely to become embarrassed, or less adequate to answer the purposes hereby intended, Then that he the said A. B. will, at any time or times thereafter, at the request of the said C. D. and E. F., convey, assign, assure, and deliver up unto them the said C. D. and E. F., their executors, administrators, and assigns, all such part of his estate and effects as shall then remain undivided, or otherwise unapplied to the ends and purposes aforesaid, for the use and benefit of them the said creditors, in such manner as they the said C. D. and E. F. shall require, until the said creditors shall have received and been paid the full amount of their respective debts and demands, on his the said A. B. being absolutely released and discharged from all and every the debt and debts, claims and demands of his said several creditors, and having any surplus which may remain, after paying the said several last-mentioned debts, duly and properly secured to him: AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of

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Covenant by the debtor to pay his debts within the time specified;

—and that if the inspectors so require, before the expiration of the term, the debtor will make to them a general assignment of his estate and effects, in trust for his creditors, on being duly released.

Covenants by the creditors to accept their

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debts in manner provided by the present deed;

the covenants and agreements herein contained on the part of the said A.B., each of them the said several persons, parties hereto of the third part, so far as relates to the debt or demand due to himself, or his partners or principals, and so far as relates to the acts and deeds of himself, his heirs, executors, and administrators, partners, or principals, doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors and administrators, that the said several creditors (parties, or represented by parties, hereto of the third part) of the said A. B. respectively, and their respective executors, administrators, partners, or assigns, will accept and receive their respective debts and demands so now due and owing to them respectively from the said A. B. as aforesaid, in the manner and at the times in and by these presents provided for the payment thereof: AND FURTHER, that if they the said creditors respectively shall not have received their full respective debts at or before the expiration of the said term of —— from the date hereof, or such other extended term (if any) as the said C. D. and E. F. shall have appointed by virtue of the power hereinbefore given to them for that purpose, and the said A. B. shall and do, on or before the expiration of the said term of —— from the date hereof, or such other extended term (if any) as aforesaid, convey, assign, assure, and deliver up unto the said C. D. and E. F. all such parts of his estate and effects as shall then remain undivided or otherwise unapplied for the purposes aforesaid, for the use and benefit of the said creditors, in such manner as the said creditors or the major part of them shall require, and if the said A. B. shall have observed and performed all and every the covenants and agreements herein contained by him to be observed and performed up to that time, then and in such case the said several creditors of the said A. B., their respective executors and administrators, shall and will thereupon and immediately thereafter duly execute and deliver unto the said A. B., his executors and administrators, sufficient and effectual releases and discharges of and from all debts and demands whatsoever which are now due and owing to them

—and on debtor making a general assignment of his property, to release him.

DEED OF INSPECTORSHIP.

the said several creditors respectively, and all actions, suits, accounts, reckonings, claims, and demands whatsoever, both at law or in equity, for, upon account, or in respect of the same, or any part thereof; PROVIDED ALSO, and it is hereby further declared and agreed by and between the said parties to these presents, that if the said A. B. shall die or shall make default in the performance or observance of any of the covenants, clauses, stipulations, or agreements hereinbefore contained, and by him to be observed or performed, then and in either of the said cases this present indenture, and the license and liberty hereby given, and every other article, clause, matter, or thing herein contained, so far as the same respectively tend to restrain the said creditors from suing for or recovering their respective debts within the time aforesaid, shall cease and determine and be utterly void to all intents and purposes whatsoever; PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the said parties to these presents, that in case either or both of them the said C. D. and E. F., or any inspector to be appointed as hereinafter mentioned, shall die, or shall refuse or decline or become incapable to act in the matters and things hereby intrusted to him or them as aforesaid, then and in every such case the major part in number and value of the creditors of the said A. B., present at a meeting convened by circulars sent by any creditor of the said A. B. by the post or otherwise, may nominate and choose such other person or persons as they shall think fit to be an inspector or inspectors in the place and stead of such of the said inspector or inspectors who shall so die or refuse or decline or become incapable to act as aforesaid, and every such person so to be chosen as aforesaid shall have the like powers and authorities in all things as the person or persons in whose room or place they or he shall have been chosen had or might exercise under or by virtue of these presents, if living and continuing to act, and as if the name or names of such new inspectors or inspector had been inserted in these presents instead of the names of the said C. D. and E. F., or one of them. AND IT IS HEREBY FURTHER AGREED and declared by and between all the said

If the debtor die, or make default, the restrictions imposed on the creditors to be void.

Power to appoint new inspectors.

Clause for the indemnity of the inspectors;

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parties hereto, that each of them the said C. D. and E. F., and all and every other the said inspector and inspectors for the time being, shall be indemnified, protected, and saved harmless by or out of the estate and effects of the said A. B., or otherwise by his said creditors, according and in proportion to the amount of their said respective debts, against or in respect of all transactions and personal engagements, matters, and things whatsoever, which they or either of them shall lawfully do or cause to be done, or enter into, order, or direct in or concerning the business, affairs, estate, or effects of the said A. B., by virtue of or in pursuance of these presents, and that they, the said parties hereto of the third part, and every of them, their and his heirs, executors, administrators, constituents, and assigns, shall and will, from time to time and at all times, allow and confirm the same in all respects; AND FURTHER, that they the said C. D. and E. F., and others the said inspector or inspectors for the time being, shall be reimbursed and repaid out of and from the estate and effects of the said A. B., or otherwise by the said creditors of the said A. B., according and in proportion to the amount of their respective debts, all such costs, charges, damages, and reasonable expenses whatsoever, as they or any of them shall respectively pay, sustain, or be put unto, in, about, or concerning the matters and things aforesaid, or in anywise relating thereto. IN WITNESS &c.

—and the payment of their expenses.

RELEASES.

General observations.

THE following Precedents are Releases, not intended to operate as conveyances, but to discharge or extinguish claims or incumbrances. The ordinary words of release when applied to property are "remise, release, and quit claim;" when applied to persons, "acquit, release, and discharge;" see ante, Vol. 3, p. 318. n. (*l*). Any words, however, which indicate the intention to discharge the claim are a sufficient release even at law; *Hickmott's case*, 9 Rep. 52 b.: *Lock* v. *Etherington*, 1 Sid. 265; and, of course, in releases to trustees, and other releases of equitable interests, the form is immaterial, if the intention be made evident. In all releases, however, it is best to follow the usual form, and to use the legal words of release.

General rules to be observed in framing releases.

Precedents do not afford much assistance in framing a release, because the bulk of the instrument consists of the recitals, which explain the state of affairs and the nature of the claims to be released; and the operative part, which contains the formal release, is very short. The great principle to be borne in mind in framing releases is, that they are of no avail if given by persons not conusant of their rights, and that they do not extend to matters which were not contemplated by the releasors. *Broderick* v. *Broderick*, 1 P. Wms. 239: *Ramsden* v. *Hylton*, 2 Ves. sen. 304: *Evans* v. *Llewellin*, 1 B. C. C. 350. See too, *Clifton* v. *Cockburn*, 3 My. & Ke. 76. It is perfectly established, too, that the general words of a release will be restrained by the recitals, that is, if the recitals indicate an intention to release only certain claims, or claims which the releasors have in certain rights or capacities only, no general words of release, however sweeping, will extend to release any other claims than those specified or indicated in the recitals. *Ramsden* v. *Hylton*, ubi supra: *Payler* v. *Homersham*, 4 Mau. & Sel. 423: *Lindo* v. *Lindo*, 1 Beav. 496: *Stokes* v. *Stokes*, 1 Lev. 272; *S. C. nom. Nokes* v. ——, 1 Ventr. 35. Hence it follows, that the recitals of a release must explain in full detail the origin of the claims to be released, all the circumstances which have arisen in connexion with them, and the manner in which they have been satisfied, or why it is intended to release them. In doing this, it is proper to set out literally the trusts or other clauses under which the claims have arisen, and to state all the subsequent material facts exactly as they have occurred. The principal difficulty is, to determine what clauses and facts are material, and, if material at all, to what extent they are so; and the power of doing this can only be acquired by experience as a practical draftsman, and a competent knowledge of the law bearing on the matter in hand.

See further, ante, Vol. 1, art. RELEASES.

LV.

IN RESPECT OF SUMS OF STOCK BEQUEATHED BY WILL.

RELEASE *by the* TRUSTEES *of a Marriage* SETTLEMENT, *and by the* HUSBAND *and* WIFE, *on the Transfer to the Trustees of Sums of* STOCK *bequeathed to the Wife by Will, and comprised in the Settlement.*

Recitals shewing the title to the stock and the settlement of it.

TO ALL TO WHOM these presents shall come, A. B., of &c.; C. D., of &c., [*trustees of a settlement which had been made of the fund*]; and E. F., of &c., and G. F., his wife, [*the settlors and parties beneficially entitled for life under the settlement*], severally send greeting. [*Recital of the will of X. Y., giving G. F., then G. Y. spinster, an equal share, with five others, in a sum of £3 per cent. Consolidated Bank Annuities, and with benefit of survivorship and accruer, in case any of the legatees should die in testator's lifetime without leaving issue; and also giving to G. F. a sum of £3 per cent. Reduced Bank Annuities absolutely, and appointing I. K. and L. M., his executors—of the testator's having made several codicils, none of which affected the above legacies, or the appointment of executors—of the death of the testator, without having revoked or altered his will, except so far as the same was altered by the codicils—of the probate of the will and codicils—that none of the legatees of the consols died in the testator's lifetime, without leaving issue—of a settlement on the marriage of E. F. and G. F., by which G. F.'s share in the consols and also the sum of reduced annuities was assigned to A. B. and M. N., in trust for E. F. for life, and afterwards to G. F. for life, if she survive, with trusts over; and with a power* (*recited verbatim*) *for the trustees to give receipts* (*a*)].

(*a*) As to the recitals of releases, see the general observations in the last page, and the recitals of the next Precedent.

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AND WHEREAS by an indenture, bearing date the —— day of ——, and made or expressed to be made between [*parties*] in pursuance of a power in that behalf contained in the said indenture of settlement, the said C. D. was duly appointed a trustee of the same indenture in the place of the said M. N.; and by the said indenture of the —— day of ——, and an indenture indorsed thereon, and bearing date the —— day of ——, and made or expressed to be made between [*parties*], All the trust monies, stocks, funds, and premises by the said indenture of settlement vested in the said A. B. and M. N. were duly vested in the said A. B. and C. D. upon the trusts declared of the same premises by the said indenture of settlement, or such of them as were then subsisting: AND WHEREAS all dividends which have accrued due in respect of the said sums of £—— £3 per cent. Consolidated Bank Annuities, and £—— £3 per cent. Reduced Bank Annuities, have been paid to the said E. F.: AND WHEREAS the said I. K. and L. M., at the request and with the privity and consent of the said E. F. and G. F., have this day transferred the sum of £—— £3 per cent. Consolidated Bank annuities, (being the one equal sixth part or share to which the said G. F. became entitled as aforesaid in the said sum of £—— like annuities bequeathed by the said will), and the said sum of £—— £3 per cent. Reduced Bank Annuities, into the names of the said A. B. and C. D. as trustees of the said indenture of settlement as aforesaid: AND WHEREAS, before making the said transfers, it was agreed that the said A. B. and C. D., and also the said E. F. and G. F., should give and execute such release as is hereinafter contained. NOW THESE PRESENTS WITNESS, that, in pursuance of the said agreement, and in consideration of the premises, they the said A. B. and C. D., and also the said E. F. and G. F., do and each of them doth by these presents acquit, release, and discharge the said I. K. and L. M., and each of them, their and each of their heirs, executors, and administrators, and their and each of their estates and effects, and also the estate and effects of the said X. Y., of and from the share to which the said G. F. became entitled as aforesaid, of or

Recital of the appointment of a new trustee of the settlement, and of the transfer of the trust funds;

—of all dividends having been paid;

—of the transfer of the stock to the trustees of the settlement;

—of the agreement to give the release.

Witnesseth release.

IN RESPECT OF SUMS OF STOCK BEQUEATHED BY WILL.

in the said sum of £—— £3 per cent. Consolidated Bank Annuities, and also of and from the said sum of £—— £3 per cent. Reduced Bank Annuities, and all dividends thereof respectively; and of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, either at law or in equity, for, upon account, or in respect of the said share to which the said G. F. became entitled as aforesaid, of or in the said sum of £—— £3 per cent. Consolidated Bank Annuities, or of the said sum of £—— £3 per cent. Reduced Bank Annuities, or any part thereof respectively, or any dividends for the same respectively, or for, upon account, or in respect of any act, deed, matter, or thing in anywise relating to the premises. IN WITNESS &c.

LVI.

OF SHARES OF STOCK BEQUEATHED BY WILL.

RELEASE *of* SHARES *in* SUMS *of* STOCK *in which life Interests had been given by Will, and which, subject thereto, fell into the Residue, and where* ONE *of the* SHARES *had been settled, and* OTHERS *had passed by the* INTESTACY *and* BEQUESTS *of* DECEASED LEGATEES.

Parties.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., of the first part; C. D., of &c., and E. D., his wife, of the second part; C. B., of &c., of the third part; E. B., of &c., of the fourth part; E. F., of &c., the said A. B. and G. H., of &c., of the fifth part; I. K., of &c., and A. K., his wife, of the sixth part, and L. M., of &c., and N. O., of &c., of the seventh part. [*Recital of the will of D. B., providing for or confirming to his wife F. B. an annuity for her life of £400, and bequeathing £8000 to P. Q. and R. S. in trust to invest the same, and to pay the income to F. B. for her life or widowhood.*] And as to, for, and concerning all the rest, residue, and remainder of his the said testator's per-

Recital of a will giving an annuity, and life interests, and funds;

—and disposing of the residue among the tes-

OF SHARES OF STOCK BEQUEATHED BY WILL.

tator's children attaining twenty-one, or, being daughters, marrying;

sonal estate and effects whatsoever or wheresoever, and of what nature or kind soever the same might be (subject to the payment of his just debts, funeral and testamentary expenses and legacies), he gave and bequeathed the same and every part thereof unto the said P. Q. and R. S., their executors, administrators, and assigns, upon trust that they or the survivor of them, his executors or administors, should, as soon as conveniently might be after his decease, make sale and absolutely dispose of and convert into money all such part and parts thereof as should not consist of monies or securities for money, and should call in, collect, and receive all such part and parts thereof as should consist of money or securities for money; And the said testator thereby declared, that they the said P. Q. and R. S., or the survivor of them, his executors or administrators, should lay out and invest the monies arising by such sale and sales, and so to be collected and received as aforesaid, in their or his own names or name upon real or government securities, or in the public funds, and stand possessed and interested of and in all such securities and funds, and the monies placed thereupon or therein, In trust to transfer and assign the same unto, between, and amongst all and every of his children, equally to be divided between and amongst them, share and share alike, except his eldest son the said A. B., then ——, and his daughter the said E. D., at the times and in manner following; (that is to say), the part or share, parts or shares of such of them as should be a daughter or daughters, to be transferred and assigned to her or them respectively at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which should first happen, provided such marriage should be had and solemnized with the consent and approbation of the guardians or guardian of such daughter or daughters; and the part or share, parts or shares of such of them as should be a son or sons, to be transferred and assigned to him or them respectively at his or their age or respective ages of twenty-one years, unless such time or times respectively should have happened in the said testator's lifetime; And the said testator did thereby nominate

IN RESPECT OF SUMS OF STOCK BEQUEATHED BY WILL.

in the said sum of £—— £3 per cent. Consolidated Bank Annuities, and also of and from the said sum of £—— £3 per cent. Reduced Bank Annuities, and all dividends thereof respectively; and of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, either at law or in equity, for, upon account, or in respect of the said share to which the said G. F. became entitled as aforesaid, of or in the said sum of £—— £3 per cent. Consolidated Bank Annuities, or of the said sum of £—— £3 per cent. Reduced Bank Annuities, or any part thereof respectively, or any dividends for the same respectively, or for, upon account, or in respect of any act, deed, matter, or thing in anywise relating to the premises. IN WITNESS &c.

LVI.

OF SHARES OF STOCK BEQUEATHED BY WILL.

RELEASE *of* SHARES *in* SUMS *of* STOCK *in which life Interests had been given by Will, and which, subject thereto, fell into the Residue, and where* ONE *of the* SHARES *had been settled, and* OTHERS *had passed by the* INTESTACY *and* BEQUESTS *of* DECEASED LEGATEES.

Parties.

THIS INDENTURE, made &c. BETWEEN A. B., of &c., of the first part; C. D., of &c., and E. D., his wife, of the second part; C. B., of &c., of the third part; E. B., of &c., of the fourth part; E. F., of &c., the said A. B. and G. H., of &c., of the fifth part; I. K., of &c., and A. K., his wife, of the sixth part, and L. M., of &c., and N. O., of &c., of the seventh part. [*Recital of the will of D. B., providing for or confirming to his wife F. B. an annuity for her life of £400, and bequeathing £8000 to P. Q. and R. S. in trust to invest the same, and to pay the income to F. B. for her life or widowhood.*] And as to, for, and concerning all the rest, residue, and remainder of his the said testator's per-

Recital of a will giving an annuity, and life interests, and funds;

—and disposing of the residue among the tes-

OF SHARES OF STOCK BEQUEATHED BY WILL.

tator's children attaining twenty-one, or, being daughters, marrying;

sonal estate and effects whatsoever or wheresoever, and of what nature or kind soever the same might be (subject to the payment of his just debts, funeral and testamentary expenses and legacies), he gave and bequeathed the same and every part thereof unto the said P. Q. and R. S., their executors, administrators, and assigns, upon trust that they or the survivor of them, his executors or administors, should, as soon as conveniently might be after his decease, make sale and absolutely dispose of and convert into money all such part and parts thereof as should not consist of monies or securities for money, and should call in, collect, and receive all such part and parts thereof as should consist of money or securities for money; And the said testator thereby declared, that they the said P. Q. and R. S., or the survivor of them, his executors or administrators, should lay out and invest the monies arising by such sale and sales, and so to be collected and received as aforesaid, in their or his own names or name upon real or government securities, or in the public funds, and stand possessed and interested of and in all such securities and funds, and the monies placed thereupon or therein, In trust to transfer and assign the same unto, between, and amongst all and every of his children, equally to be divided between and amongst them, share and share alike, except his eldest son the said A. B., then ——, and his daughter the said E. D., at the times and in manner following; (that is to say), the part or share, parts or shares of such of them as should be a daughter or daughters, to be transferred and assigned to her or them respectively at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which should first happen, provided such marriage should be had and solemnized with the consent and approbation of the guardians or guardian of such daughter or daughters; and the part or share, parts or shares of such of them as should be a son or sons, to be transferred and assigned to him or them respectively at his or their age or respective ages of twenty-one years, unless such time or times respectively should have happened in the said testator's lifetime; And the said testator did thereby nominate

OF SHARES OF STOCK BEQUEATHED BY WILL.

and appoint his said son, the said A. B., and the said P. Q. and R. S., executors of his said will: AND WHEREAS the said testator duly made, signed, and published a codicil, bearing date the —— day of ——, to his said will, and thereby gave and bequeathed unto the said P. Q. and R. S. £3000 stock, part of his capital in £3 per cent. Consolidated Bank Annuities, Upon trust [*for the widow for life, and then for A. B., if he should have any issue*]: AND WHEREAS the said D. B. made ten other codicils to his said will, which did not in anywise affect the said annuity of £400, or the said legacies of £8000 sterling, and £3000 £3 per cent. Consolidated Bank Annuities, or the disposition made by the said will of the residue of the personal estate and effects of the said testator: AND WHEREAS the said D. B. died on the —— day of —— without having in anywise revoked or altered the said will, or the said hereinbefore recited codicil, so far as relates to the premises; and the said will, and the said hereinbefore recited codicil and the said other codicils, were proved on the —— day of ——, in the Prerogative Court of the Archbishop of Canterbury, by the said A. B. and R. S., the said P. Q. having renounced probate thereof: AND WHEREAS the said D. B. left living at his death the said F. B., his widow, and the said A. B., E. D., C. B., and E. B., G. B., the said A. K., then A. B., and H. B., and no other children; And all the said children long since attained their respective ages of twenty-one years: AND WHEREAS by a deed poll, bearing date the —— day of ——, under the hands and seals of the said P. Q., R. S., A. B., N. O., and L. M., in pursuance of a power for that purpose in the said will contained, the said L. M. and N. O. were appointed to be trustees for the purposes declared in and by the said will and codicils in the place of the said P. Q., who was desirous of being discharged from the said trusts (*a*): AND WHEREAS, on the —— day of ——, the said A. B. and R. S., by or out of

—of a codicil bequeathing stock for life, w.th trust over;

—of other codicils not affecting the premises;

—of the death of the testator, and the probate of his will and codicils;

—of the children living at the testator's death, and of their having all attained twenty-one;

—of the appointment of new trustees of the will;

—of the purchase of stock in the names of

As to the appointment of two trustees in the place of one.

(*a*) It is a question, whether two trustees can be appointed in the room of one deceased or retiring. See *Devey* v. *Pearce*, Taml. 77: *Sands* v. *Nugee*, Lewin on the Law of Trusts, 471, and 711.

OF SHARES OF STOCK BEQUEATHED BY WILL.

the personal estate of the said D. B., transferred into the names of the said R. S., L. M., and N. O., the sum of 13,333*l.* 6*s.* 8*d.*, £3 per cent. Consolidated Bank Annuities, to answer the said annuity of £400 by the said will provided for or confirmed to the said F. B. as aforesaid, and laid out the said legacy or sum of £8000, bequeathed by the said will upon the trusts aforesaid, in the purchase, in the names of the said R. S., L. M., and N. O., of the sum of 9039*l.* 10*s.* 10*d.* like annuities, and transferred the sum of £3000 like annuities into the names of the said R. S., L. M., and N. O., as and in satisfaction of the said legacy of that amount bequeathed by the hereinbefore recited codicil: AND WHEREAS the said H. B. died on the —— day of —— intestate and without having been married; and on the —— day of —— letters of administration of his goods and chattels, rights and credits, were granted to the said A. B. by the Prerogative Court of the Archbishop of Canterbury: AND WHEREAS on the death of the said H. B., the said F. B., A. B., E. D., C. B., E. B., G. B., and A. K., (then A. B.), became entitled in equal shares to the personal estate of the said H. B., by virtue of the statutes for the distribution of the personal estate of intestates: AND WHEREAS by an indenture bearing date the —— day of ——, and made or expressed to be made between the said I. K. of the first part, the said A. K. (then A. B., spinster), of the second part, the said E. F., A. B., and G. H., of the third part (being the settlement made previously to and in consideration of the marriage then intended and shortly after had and solemnized between the said I. K. and A. K.), the said A. K., with the privity of the said I. K., did assign unto the said E. F., A. B., and G. H., their executors, administrators, and assigns, the one equal fifth share, and the equal seventh part of one other equal fifth share, to which the said A. K., as a legatee under the said will of the said D. B., and as one of the next of kin of the said H. B. as hereinbefore is mentioned, was entitled in reversion expectant on the death of the said F. B. in the said sum of 13,333*l.* 6*s.* 8*d.*, £3 per cent. Consolidated Bank Annuities; And also the one equal fifth share, and the one equal

the trustees to answer the annuity, and of the investment of the life legacy to the testator's widow;

—of the death of one child intestate, and of the grant of administration to him;

—of the manner in which his personal estate became distributable;

—of the settlement of one legatee's share on her marriage;

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seventh part of one other equal fifth share, to which the said A. K., as a legatee under the said will of the said D. B., and as one of the next of kin of the said H. B. as hereinbefore is mentioned, was entitled in reversion expectant on the death or second marriage of the said F. B. in the said sum of 9039*l.* 10*s.* 10*d.* £3 per cent. Consolidated Bank Annuities, To hold the same unto the said E. F., A. B., and G. H., their executors, administrators, and assigns, upon the trusts in the said indenture declared and contained of and concerning the same; AND it was by the said indenture now in recital declared, that the receipt or receipts, &c. [*trustees' receipt clause recited verbatim*]:

—of the will of another legatee disposing of his share;

AND WHEREAS the said G. B. duly made and signed his last will and testament, bearing date the —— day of ——, and thereby gave and bequeathed all his personal estate and effects whatsoever and wheresoever, and of what nature or kind soever, and whether in possession, remainder, or expectancy, unto his brother the said A. B. and his four sisters, the said E. D., C. B., E. B., and A. K., to be equally divided amongst them, share and share alike, subject to the payment of his just debts and funeral and testamentary expenses; and subject to any legacy or legacies he might thereafter bequeath by any codicil or codicils to that his will; And the said G. B. thereby appointed the said A. B. and C. D. executors of his said will:

—of his death, and the probate of his will, and of a codicil not affecting the premises;

AND WHEREAS the said G. B. made a codicil to his said will, which did not affect the said general bequest contained in the said will so far as relates to these presents, and died on the —— day of —— without having otherwise revoked or altered his said will; and the said will and codicil were on the —— day of —— proved by the said A. B. and C. D. in the Prerogative Court of the Archbishop of Canterbury:

—of the will of the testator's widow, disposing of her share as one of the next of kin of her deceased intestate son;

AND WHEREAS the said F. B. duly made and signed her last will and testament, bearing date the —— day of ——, and thereby, after giving certain specific pecuniary legacies, gave and bequeathed all the rest, residue, and remainder of her estate and effects of what nature or kind soever, and whether in possession or reversion, over which she had any power of disposition, (except such parts of her household goods

and furniture, plate, linen, books, pictures, and trinkets, as she might by any codicil or codicils to that her will otherwise specifically dispose of), to her daughters the said C. B. and E. B., or to such one of them as should not have been married at the time of her decease, to be equally divided between them if they both should remain unmarried, to and for their own absolute use and benefit; And she thereby nominated and appointed her son the said A. B., and her daughter the said C. B., and the said E. D., executors of her said will: AND WHEREAS the said F. B. died on the —— day of —— without having revoked or altered her said will, and the same was proved in the Prerogative Court of the Archbishop of Canterbury on the —— day of —— by the said A. B., C. B., and C. D.: AND WHEREAS the said R. S. departed this life on the —— day of ——: AND WHEREAS all the funeral and administration and testamentary expenses and debts of the said H. B., G. B., and F. B. respectively, have been paid and satisfied by their respective personal representatives out of other parts of their personal estates, so that the parts or shares to which the said H. B., G. B., and F. B. respectively became entitled, as appears by the recitals hereinbefore contained, of or in the said sums of 13,333*l.* 6*s.* 8*d.*, £3 per cent. Consolidated Bank Annuities, and 9039*l.* 10*s.* 10*d.*, like annuities, are divisible and transferable amongst the said several persons beneficially entitled thereto respectively under the statutes for the distribution of the estates of intestates, and the hereinbefore recited wills of the said G. B. and F. B; And it has therefore been agreed that such shares shall be transferred to the persons beneficially entitled thereto as aforesaid, and not to the legal personal representatives of the said H. B., G. B., and F. B. respectively (*b*): AND WHEREAS all the legacy and other stamp duties which have become payable

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—of her death, and the probate of her will;

—of the death of one trustee;

—of the agreement, that the shares of the deceased legatees shall be transferred directly to the persons beneficially interested, and not to the personal representatives;

—of all legacy and stamp duties having been paid;

(*b*) The objection to transferring the share of a deceased person to his next of kin or legatees, instead of to his administrator or executor, is the possibility of his having left debts unpaid; but, if the administrator or executor concur in the transfer, and the trustees see that the stamp duty is paid, there is little practical objection to the proceeding.

As to the payment to the next of kin or legatees of a deceased person instead of to his administrator or executor.

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in respect of the said sums of 13,333*l.* 6*s.* 8*d.* £3 per cent. Consolidated Bank Annuities, 9039*l.* 10*s.* 10*d.* like annuities, and £3000 like annuities, and the several parts or shares of the said two first-mentioned sums, as well under the said will and codicils of the said D. B., as on the death and intestacy of the said H. B., and under the said wills of the said G. B. and F. B. respectively, have been paid and satisfied before the date and execution of these presents: AND WHEREAS the said sums of 13,333*l.* 6*s.* 8*d.* £3 per cent. Consolidated Bank Annuities, and 9039*l.* 10*s.* 10*d.* like annuities, amount together to the sum of 22,372*l.* 17*s.* 6*d.* like annuities: AND WHEREAS, as appears by the recitals hereinbefore contained, each of them the said C. B., E. B., G. B., A. K., then A. B., spinster, and H. B., was originally entitled, under the said will of the said D. B., to the sum of 4474*l.* 11*s.* 6*d.* £3 per cent. Consolidated Bank Annuities, as one equal fifth part of the said sum of 22,372*l.* 17*s.* 6*d.* like annuities: AND WHEREAS, on the death of the said H. B., each of them the said F. B., A. B., E. D. (or the said C. D. in her right), C. B., E. B., G. B., and A. K. (then A. B., spinster), became entitled, as hereinbefore appears, to the sum of 639*l.* 4*s.* 6*d.* £3 per cent. Consolidated Bank Annuities, as one equal seventh part of the aforesaid sum of 4474*l.* 11*s.* 6*d.* like annuities, to which the said H. B. was entitled as aforesaid: AND WHEREAS, on the death of the said G. B., each of them the said A. B., E. D., (or the said C. D. in her right), C. B., E. B., and A. K., (or the said I. K. in her right), became entitled under the said will of the said G. B. to the sum of 1022*l.* 15*s.* 2*d.* £3 per cent. Consolidated Bank Annuities, being the amount of one equal fifth share of the sums of 4474*l.* 11*s.* 6*d.* like annuities, and 639*l.* 4*s.* 6*d.* like annuities, to which the said G. B. was entitled as hereinbefore appears: AND WHEREAS, on the death of the said F. B., the said C. B. and E. B. became entitled under the said will of the said F. B. to the sum of 319*l.* 12*s.* 3*d.* £3 per cent. Consolidated Bank Annuities, being one equal half part of the said sum of 639*l.* 4*s.* 6*d.* like annuities, to which the said F. B. became entitled as hereinbefore is

—of the total amount of the fund divisible;

—of the shares in which the legatees were originally entitled;

—of the share which accrued on the death of the first legatee to each of the others;

—and on the death of the second legatee;

—and on the death of the widow;

mentioned: AND WHEREAS the said A. B. had lawful issue living at the death of the said F. B., and thereby became entitled to the aforesaid sum or legacy of £3000 £3 per cent. Consolidated Bank Annuities, bequeathed by the hereinbefore recited codicil to the said will of the said D. B.: AND WHEREAS all dividends which accrued due on the said several sums of Bank annuities up to the death of the said F. B. were paid to the said F. B., and no dividends have accrued thereon since the death of the said F. B.: AND WHEREAS the said L. M. and N. O. have transferred into the name of the said A. B. the sum of 4661*l.* 19*s.* 8*d.* £3 per cent. Consolidated Bank Annuities, being the amount of the said sums of £3000 like annuities, 639*l.* 4*s.* 6*d.* like annuities, and 1022*l.* 15*s.* 2*d.* like annuities, to which the said A. B. is entitled as hereinbefore is mentioned, and have (with the privity and consent of the said E. D., testified by her being a party to and executing these presents,) transferred into the name of the said C. D. the sum of 1661*l.* 19*s.* 8*d.* £3 per cent. Consolidated Bank Annuities, being the amount of the said sums of 639*l.* 4*s.* 6*d.* like annuities, and 1022*l.* 15*s.* 2*d.* like annuities, to which the said E. D. or the said C. D. in her right is entitled as hereinbefore is mentioned, and have transferred into the names of each of them the said C. B. and E. B. the sum of 6456*l.* 3*s.* 5*d.* £3 per cent. Consolidated Bank Annuities, being the amount of the said several sums of 4474*l.* 11*s.* 6*d.* like annuities, 639*l.* 4*s.* 6*d.* like annuities, 319*l.* 12*s.* 3*d.* like annuities, and 1022*l.* 15*s.* 2*d.* like annuities, to which they the said C. B. and E. B. are respectively entitled as hereinbefore is mentioned, and have (with the privity and by the direction of the said I. K. and A. K., testified by their being parties to and executing these presents,) transferred into the names of the said E. F., A. B., and G. H., as trustees of the hereinbefore recited indenture of settlement, the sum of 5113*l.* 16*s.* £3 per cent. Consolidated Bank Annuities, being the amount of the said sum of 4474*l.* 11*s.* 6*d.* like annuities, and 639*l.* 4*s.* 6*d.* like annuities, to which the said A. K. and I. K. in her right became entitled as hereinbefore is mentioned, and which by the said indenture of

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—of one of the legatees having become entitled to the legacy given by the codicil;

—of all dividends having been paid;

—of the transfer to the several legatees of their respective shares;

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settlement were assigned to the said E. F., A. B., and G. H., their executors, administrators, or assigns as aforesaid, and have (with the privity and consent of the said A. K., testified as aforesaid,) transferred into the name of the said I. K. the said sum of 1022*l.* 15*s.* 2*d.* £3 per cent. Consolidated Bank Annuities, to which the said A. K. or the said I. K. in her right became entitled after the date and execution of the said indenture of settlement as aforesaid: AND WHEREAS, before making the several transfers aforesaid, it was agreed that the several releases hereinafter contained should be made and executed. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, they the said A. B., C. D., and E. D., C. B., E. B., E. F., G. H., and the said I. K. and A. K., according to their several rights and interests in the premises, do and each of them doth, by these presents, acquit, release, and discharge the said L. M. and N. O., and each of them, their and each of their heirs, executors, and administrators, estates and effects, and also the estate and effects of the said D. B., of and from the said sum of 13,333*l.* 6*s.* 8*d.* £3 per cent. Consolidated Bank Annuities, (so set apart to answer the said annuity of £400 as aforesaid), and of and from the said sum of £8000, by the said will of the said D. B. bequeathed as aforesaid, and the said sum of 9039*l.* 10*s.* 10*d.* £3 per cent. Consolidated Bank Annuities, in which the same was invested as aforesaid, and of and from their respective parts or shares in the said sum, and every of them, and of and from all interest, dividends, and annual proceeds, for or in respect of the said sums or any of them, or of the several parts or shares thereof respectively, and of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for or in respect of the aforesaid sums or any of them, or any part or share, parts or shares thereof respectively, or the dividends, interest, or annual produce of the same respectively, or for, upon account, or in respect of any act, deed, matter, or thing in anywise relating to the premises. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, He the said A. B. doth by

—of the agreement to execute the present releases.

Witnesseth, release by all the persons interested to the trustees under the will of the original testator of the entire sums bequeathed, and their respective shares therein.

Witnesseth further. Release by the legatee in respect of the

these presents acquit, release, and discharge the said L. M. and N. O., and each of them, their and each of their heirs, executors, administrators, estates, and effects, and the estates and effects of the said D. B., of and from the said sum of £3000 £3 per cent. Consolidated Bank Annuities, bequeathed by the hereinbefore recited codicil to the said will of the said D. B., and of and from all dividends and annual proceeds in respect of the same, and of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for, upon account, or in respect of the said last-mentioned sum, or the dividends or annual proceeds thereof, or any act, deed, matter, or thing in anywise relating thereto. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, they the said C. D. and E. D., C. B., E. B., E. F., G. H., and I. K. and A. K., do and each of them doth, by these presents, acquit, release, and discharge the said A. B., his heirs, executors, administrators, estates, and effects, and also the estate and effects of the said H. B., of and from the several parts or shares to which they are respectively entitled as hereinbefore is mentioned, of or in the said sum of 4474*l.* 11*s.* 6*d.* £3 per cent. Consolidated Bank Annuities, to which the said H. B. was entitled as aforesaid, and of and from all dividends and annual proceeds in respect of the same parts or shares respectively, and of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for, upon account, or in respect of the said last-mentioned sum, or any part or share thereof, or of the dividends or annual proceeds thereof, or of any part or share thereof, or for or in respect of any act, deed, matter, or thing in anywise relating to the premises. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, they the said A. B., C. D., E. D., E. B., and I. K. and A. K., do and each of them doth, by these presents, acquit, release, and discharge the said A. B. and C. D., and each of them, their and each of their heirs, executors, and administrators, estates and effects, and also the estate and effects of the said G. B., of and from the

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legacy given by the codicil.

Witnesseth further. Release to the administrators of the legatee, who died intestate, in respect of his share.

Witnesseth further. Release to the executors of the legatee, who died leaving a will.

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several parts or shares to which they the said A. B., C. D., and E. D., C. B., E. B., and I. K. and A. K. are respectively entitled as aforesaid, under the said will of the said G. B., in the said sum of *22,372l.* 17*s.* 6*d.*, and of and from all dividends and annual proceeds in respect thereof, and of and from all actions, suits, accounts, reckonings, claims and demands whatsoever, for, or upon account, or in respect of the said last-mentioned shares, or any act, deed, matter, or thing in anywise relating thereto. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, they the said C. B. and E. B. do and each of them doth, by these presents, acquit, release, and discharge the said A. B., C. B., and C. D., and each of them, their and each of their heirs, executors, administrators, estates and effects, and also the estate and effects of the said F. B., of and from the said several parts or shares to which they the said C. B. and E. B. are respectively entitled as aforesaid, under the said will of the said F. B., of or in the said sum of *22,372l.* 17*s.* 6*d.*, and of and from all dividends and annual proceeds in respect of the said parts or shares respectively, and of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for, upon account, or in respect of the said last-mentioned parts or shares, or any act, deed, matter, or thing in anywise relating thereto (*c*). IN WITNESS &c.

Witnesseth further. Release to the executors of the testator's widow.

Releases to several persons embodied in the same deed.

(*c*) It must be borne in mind, that the principal object of the present deed is the release of the trustees under the original will and codicil, and that the subsequent releases are merely subsidiary, and are embodied in this deed only because the shares of the deceased parties are paid directly to their next of kin and legatees, and not to their administrators or executors. In strictness, the releases to these administrators and executors ought all to be by separate deeds, to remain in their respective custodies; but they are placed in this deed to save the expense of separate deeds. If the shares of the deceased parties had been transferred to their administrators or executors, they alone would have released the trustees under the original will and codicil in respect of those shares, and would have obtained discharges in such manner as they thought fit from the persons to whom they were accountable.

In determining whether a release must be by a separate deed, or may be included in a deed containing other releases or matters, the question

LVII.

BY THE TENANT FOR LIFE, AND REVERSIONER OF RESIDUARY PERSONAL ESTATE.

RELEASE *of the* EXECUTORS *and* TRUSTEES *of a* WILL *by the* TENANT FOR LIFE, *and the* PERSON ENTITLED IN REVERSION *to the* RESIDUE *of the Testator's* PERSONAL *Estate*—PROVISO *that the Release shall not extend to the Funds actually held by the Trustees.*

TO ALL TO WHOM these presents shall come, C. B., of &c., the widow of A. B., deceased, and D. B., the only child of the said A. B. and C. B., severally send greeting: WHEREAS the said A. B. duly made, signed, and published his last will and testament in writing, bearing date the —— day of ——, and thereby gave "all he had" to his wife, the said C. B., for her life, and then to their son (meaning the said D. B.) absolutely; and the said testator gave the said C. B. absolutely £——; and he gave to C. D. of &c., E. F. of &c., G. H. of &c., and I. K. of &c. £—— each; and the said testator thereby named the said C. B., C. D. of &c., E. F. of &c., G. H. of &c., and I. K. of &c., to be his executors and guardians to his son: AND WHEREAS the said A. B. made several codicils to his said will, and thereby gave several pecuniary legacies: AND WHEREAS the said A. B. died on the —— day of —— without having revoked or altered his said will or codicils: AND WHEREAS the said will and codicils were proved on the —— day of ——, in the Prerogative Court of the Archbishop of Canterbury, by the said C. B., C. D., E. F., G. H., and I. K.: AND WHEREAS the personal estate of the said

Recital of a will, giving all the testator's property, subject to the payment of some legacies, to his wife for life, and then to his son absolutely;

—of codicils giving legacies;

—of the death of the testator;

—of the probate of his will and codicils;

is, in whose custody the deed will remain, inasmuch as it is obviously desirable that a release should remain in the custody of the person released,—the persons who are to make use of it if need be.

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A. B. at his death consisted of a sum of £—— cash at his bankers, of £—— in Exchequer Bills, of £—— £3 per cent. Consolidated Bank Annuities, of £—— £3 10*s.* per cent. Bank Annuities, of £—— £3 per cent. Reduced Bank Annuities standing in his own name, and of certain leasehold hereditaments situate at ——, in the county of ——, and holden for a term of years of ——, and of certain sums of money owing to him, and amounting in the whole to the sum of £——: AND WHEREAS the said C. B., C. D., E. F., G. H., and I. K., shortly after the said testator's death, collected and got in the debts due to him, and sold the said sum of £—— Exchequer Bills, and by and out of the monies so collected, and the said money at the bankers, and the money which arose from the said sale of Exchequer Bills, paid the funeral and testamentary expenses and debts of the said testator, and the legacies bequeathed by his said will and codicils, and laid out the residue of the same monies in the purchase, in the names of the said C. D., E. F., G. H., and I. K., of a sum of £—— £3 per cent. Consolidated Bank Annuities: AND WHEREAS the said sums of £—— £3 per cent. Consolidated Bank Annuities, £—— £3 10*s.* per cent. Bank Annuities, and £—— £3 per cent. Reduced Bank Annuities, remain standing in the name of the said A. B.: AND WHEREAS the said C. D., E. F., G. H., and I. K., with the concurrence of the said C. B., in the month of —— sold the sum of £—— £3 per cent. Consolidated Bank Annuities, part of the said sum of £—— like annuities, (leaving the sum of £—— like annuities, the residue of the same sum), and advanced and lent the sum of £——, the net monies produced by such sale, (together with other monies amounting together to the sum of £——), to X. Y. upon a mortgage of estates at —— and elsewhere, in the county of ——, in Ireland, made by an indenture bearing date the —— day of ——, and made or expressed to be made between the said X. Y. of the one part, and the said C. D., E. F., G. H., and I. K. of the other part: AND WHEREAS the said D. B. is the only child of the said A. B. and C. B., and attained his age of twenty-one years on the —— day of ——: AND WHEREAS the interest, dividends,

—of the personal estate of the testator at his death;

—of the funeral and testamentary expenses and debts of the testator having been paid out of certain funds, and the residue invested;

—of the remainder of the testator's estate, consisting of stock, remaining as at his death;

—of an investment of part of the trust estate on mortgage;

—of the testator's only son having attained twenty-one;

—of all income

BY THE TENANT FOR LIFE, AND REVERSIONER OF RESIDUARY PERSONAL ESTATE.

and annual produce of the whole of the said trust monies, stocks, funds, and securities, and the net rents of the said leasehold estates have been paid to or received by the said C. B. up to the day of the date of these presents: AND WHEREAS the said C. B. and D. B., being satisfied with the account rendered of the personal estate of the said A. B., and of the disposition and application thereof, and being satisfied with the conduct of the said C. D., E. F., G. H., and I. K. in the execution of the said will, and in relation to the premises, have agreed to execute such release to them as is hereinafter contained, subject nevertheless to the proviso or condition hereinafter contained; AND THE SAID D. B., being satisfied with the conduct of the said C. B. in relation to the premises, has also agreed to execute such release to the said C. B. as is hereinafter contained, subject to the proviso or condition aforesaid (*a*). NOW THESE PRESENTS WITNESS, that, in pursuance of the said agreements, and in consideration of the premises, they the said C. B. and D. B. do and each of them doth, by these presents, acquit, release, and discharge the said C. D., E. F., G. H., and I. K., and every of them, their and every of their heirs, executors, and administrators, estates and effects; AND HE THE SAID D. B. doth by these presents acquit, release, and discharge the said C. B., her heirs, executors, and administrators, estates and effects, of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for, upon account, or in respect of the administration, disposition, or application of the personal estate of the said A. B., or any part thereof; or for, upon account, or in respect of any sale, loan, investment, act, deed, matter, or thing whatsoever, made, done,

actually accrued having been paid to the tenant for life;

—of the satisfaction of the cestui que trusts with the conduct of the trustees, and the agreement to release them.

Witness.

General release in respect of the trust estate, and all dealings therewith.

(*a*) If the release be by a party entitled in possession, it will be necessary to shew by recitals, immediately before this last recital, that the trust funds have been all transferred or made over to the cestui que trust, (see supra, pp. 481—484), and that the legacy duty has been paid. In that case too, the proviso that the release shall not extend to the funds remaining in the trustees' hands, and the reference in the recital to that proviso, will of course be omitted.

Variations required in the release when made by a cestui que trust entitled in possession.

BY THE TENANT FOR LIFE, AND REVERSIONER OF RESIDUARY PERSONAL ESTATE.

committed, or executed, or neglected, or omitted by the said C. B., C. D., E. F., G. H., and I. K., or any of them, in or about the personal estate of the said A. B., or any part thereof, or in anywise in the execution of his said will and codicils, or in relation thereto; or for, upon account, or in respect of any act, deed, matter, or thing whatsoever in anywise relating to the premises: PROVIDED ALWAYS, and the said C. B. and D. B. do hereby expressly declare, that the release hereinbefore contained shall in nowise operate or enure to release or discharge the said C. B., C. D., E. F., G. H., and I. K., or any of them, their or any of their heirs, executors, or administrators, estates or effects, from the said sums of £—— £3 per cent. Consolidated Bank Annuities, £—— £3 10*s.* per cent. Bank Annuities, £—— £3 per cent. Reduced Bank Annuities, £—— £3 per cent. Consolidated Bank Annuities, and £——, or any of them, or any part thereof respectively, or the dividends or interest henceforth to accrue due on the same, or from the said leasehold premises, and the rent henceforth to accrue due on the same (*b*). IN WITNESS &c.

Proviso, that release shall not extend to the funds actually held by the trustees.

Method of framing a release of affairs up to a given period only.

(*b*) Whenever a release is to be given in respect of all transactions up to the date of the release, but before the determination and final settlement of the trust, the most convenient course is, (as in the Precedent in the text), to make the release absolute and unqualified as on a final settlement, and afterwards to restrain it by proviso from extending to the funds specified. See the last page, note (*a*).

LVIII.

TO THE TRUSTEES OF A SETTLEMENT BY TENANT FOR LIFE, AND REVERSIONER.

RELEASE *by the Surviving* TENANT FOR LIFE *and the* PERSON *entitled in* REVERSION *under a Marriage* SETTLEMENT *of* STOCKS *and* MONEY *lent on* MORTGAGE. PROVISO, *that the Release shall not take effect as to part of the Funds till certain acts have been done by the Trustees.* PROVISO, *that the Release shall not extend to the Funds actually remaining vested in the Trustees.*

TO ALL TO WHOM these presents shall come, C. B., of &c., the widow of A. B., deceased, [*the tenant for life*], and D. B., of &c., the only child of the said A. B. and C. B., severally send greeting. [*Recital of a marriage settlement vesting trust funds in four trustees upon trust for A. B. and C. B. in succession for life, and afterwards in trust for their child and children attaining twenty-one* (*the trusts being set out at length down to and including that for the children, and that to vary securities*)—*of the deaths of old and the appointment of new trustees—of the death of A. B.—of various dealings with the trust funds, including the loan of monies on mortgages,* (*see supra, p.* 488), *and particularly of a loan of £—— to C. B. upon the security of a conditional surrender of a copyhold estate, and of a further sum of £—— to C. B. upon a further charge by deed of covenant on the same estate*—" that D. B. was the only child of the said A. B. and C. B., and attained his age of twenty-one years on the —— day of ——;"—*of an indenture of even date with the present deed* (*but noticed as not yet having been executed by the trustees*), *whereby A. B. and C. B. having agreed that the copyhold estate should be limited to C. B. for life, with remainder to A. B. in fee, and that A. B. should take such remainder in lieu of his reversionary interest in the money charged upon it, the*

Recitals of title to the trust funds;

TO THE TRUSTEES OF A SETTLEMENT BY TENANT FOR LIFE AND REVERSIONER.

trustees by the direction of A. B. and C. B. covenant to surrender accordingly, freed from such money (*a*).] AND WHEREAS the only monies which now remain vested in the said C. D., E. F., G. H., and I. K., upon the trusts of the said settlement of the —— day of ——, are the said sum of £—— owing to them by the said ——, and the said sum of £——, part of the said sum of £——, owing to them by the said —— as aforesaid, And all interest which has accrued due on the same has been paid to the said C. B.:

—of the funds now remaining subject to the trusts;

—of the agreement for the release subject to certain provisoes.

AND WHEREAS the said C. B. and D. B. being satisfied with the account rendered by the said C. D., E. F., G. H., and I. K., of the disposition and application of the said trust monies, stocks, funds, and funds comprised in the said settlement, and of the interest and annual produce thereof, and being satisfied with the conduct of the said trustees in the execution of the trusts of the said settlement up to the date of these presents, have agreed to execute such release as is hereinafter contained, subject nevertheless to the provisoes or conditions hereinafter contained (*b*).

Witness.

NOW THESE PRESENTS WITNESS, that, in pursuance of the said agreement, and in consideration of the premises, they the said C. B. and D. B. do and each of them doth, by these presents, acquit, release, and discharge the said C. D., E. F., G. H., and I. K., and every of them, their and every of their heirs, executors, and administrators, estates and effects, of and from the said sums of £—— and £——, advanced and paid to the said C. B. as aforesaid, and all interest for the same; and of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, for, upon account, or in respect of the same sums respectively, or the interest thereof respectively, or any part thereof respectively; or for, upon account, or in respect of any sale, purchase, loan, investment, act, deed, matter, or thing whatsoever, made, done,

General release in respect of the trust funds.

(*a*) See the observations as to the recitals of releases, supra, p. 473; see too, the recitals of Precedent 56, supra, pp. 476, 481.

(*b*) See supra, p. 489, n. (*a*), as to the variations required when the release is to be given by a party in possession.

committed, or executed, or neglected, or omitted by the said C. D., E. F., G. H., and I. K., or any of them, in or about the trust monies, stocks, funds, or securities comprised in the said settlement, or at any time subject thereto, or any of them, or any part thereof, or in anywise in the execution of the trusts of the said settlement, or in relation thereto; or for, upon account, or in respect of any act, deed, matter, or thing whatsoever in anywise relating to the premises: PROVIDED ALWAYS, and they the said C. B. and D. B. do hereby expressly declare, that the release hereinbefore contained shall not operate or enure to release or discharge the said C. D., E. F., G. H., and I. K., or any of them, their or any of their heirs, executors, administrators, estates, or effects, from the said sums of £—— and £——, charged on the said copyhold premises as aforesaid, or either of them, or any part thereof respectively, or any interest for the same respectively, until the said C. D., E. F., G. H., and I. K., their executors or administrators, shall have executed the hereinbefore recited indenture of even date with these presents, nor from the same sum of £—— and interest, until the said C. D., E. F., G. H., and I. K., their executors or administrators, shall have duly entered up satisfaction on the said conditional surrender of the —— day of ——; but nevertheless the agreement between the said C. B. and D. B. in respect of the said copyhold premises, and the said sums of £—— and £——, is not to be affected by this present proviso (*c*): PROVIDED ALWAYS, and the said C. B. and D. B. do hereby expressly declare, that the release hereinbefore contained shall in nowise operate or enure to release or discharge the said C. D., E. F., G. H. and I. K., or any of them, their or any of their heirs, executors, administrators, estates or effects, from the said sum of £—— owing from the said —— as aforesaid, or the interest henceforth to accrue due thereon, or from the said sum of £—— owing from the said —— as aforesaid, or the interest henceforth to accrue due thereon (*c*). IN WITNESS &c.

TO THE TRUSTEES OF A SETTLEMENT BY TENANT FOR LIFE, AND REVERSIONER.

Proviso that the release shall not operate as to certain funds till the trustees have done certain acts.

Proviso that the release shall not extend to the funds remaining in the hands of the trustees.

(*c*) See supra, p. 490, n. (*b*).

LIX.

OF JOINTURE RENT-CHARGES.

EQUITABLE RELEASE *of* PART *of* LANDS *charged with two* JOINTURE RENT-CHARGES (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B. of &c., the widow of C. B., late of &c., [*jointress*], of the first part; D. E. of &c., [*the owner of the lands*], of the second part; F. G. of &c., [*a purchaser of part of the lands*], of the third part; and G. H. of &c., and I. K. of &c. [*trustees*], of the fourth part. WHEREAS by indentures of lease and release, bearing date respectively the —— and —— days of ——, the release being made or expressed to be made between [*parties*], (being the settlement made in pursuance of certain articles of agreement bearing date the —— day of ——, and entered into previously to and in consideration of the marriage of the said C. B. with the said A. B.), divers manors, lordships, baronies, messuages, farms, lands, tenements, mills, rents, tolls, and other hereditaments situate or arising in the several parishes, townships, or places therein mentioned, in the county of ——, with their rights, members, easements, and appurtenances, were conveyed and assured, and by the said indenture of release limited to the said —— and ——, their executors, administrators, and assigns, for a term of ninety-nine years, upon the trusts in the said

Recital of the settlement limiting the jointure rent-charges;

Release of part of the lands charged with a rent-charge.

(*a*) If the person entitled to a rent-charge release part of the land out of which it is payable, the whole rent-charge is thereby extinguished. Co. Lit. 148. a; Burton's Law of Real Property, 372; 3 Cru. Dig. 301. When, therefore, it is intended to release from a rent-charge part only of the lands charged therewith, the usual practice is to assign the rent-charge to trustees in trust to levy it exclusively out of the lands intended to remain subject, in exoneration of the lands intended to be released. This Precedent is an example of such an assignment. If the rent-charge be secured by a term of years, the term in the lands to be released is surrendered to the person having the next estate in reversion.

OF JOINTURE RENT-CHARGES.

indenture of release mentioned, and which hath since determined by virtue of a proviso for cesser therein contained, to the use of the said C. B. and his assigns for his life, without impeachment of waste, and after his decease to the use and intent that the said A. B. and her assigns might during her life receive an annual sum or yearly rent-charge of £——, by way of jointure and in bar of dower, and in certain events therein specified, and which have since happened, a further annual sum or yearly rent-charge of £——, the said annual sums or yearly rent-charges respectively to be payable at such times and in such manner, and to be attended with such powers and remedies for recovering and compelling payment thereof respectively when in arrear, by distress and entry upon and detention of the possession and perception of the rents and profits of the said hereditaments charged therewith, as in the said indenture of release are mentioned and contained, and subject and charged as aforesaid, to the use of the said —— and ——, their executors, administrators, and assigns, for the term of 2000 years without impeachment of waste, with remainder to the use of the said C. B., his heirs, and assigns; And it was by the said indenture of release declared that the said hereditaments were so limited to the said —— and ——, their executors, administrators, or assigns, for the said term of 2000 years as aforesaid, upon trust in the first place for securing the payment of the said annual sums or yearly rent-charges of £—— and £——, and subject thereto upon the further trusts therein mentioned (*b*). [*Recital of a settlement by C. B., subject to the terms and rent-charges, under which D. E. is tenant for life, and which contains a*

—of a subsequent settlement;

(*b*) See supra, n. (*a*). The term in the present case is not surrendered because the trusts of it extended to other purposes than that of securing the rent-charge; and it was probably deemed unnecessary to make a special declaration of trust of the term in favour of the lands to be exonerated, on the ground that the trustees of the term would be bound to follow the trusts declared of the rent-charges.

Surrender of the terms—why omitted.

If it be intended to surrender the term, the trusts should be set out at length, and the recitals must shew in whom the immediate reversion is vested.

OF JOINTURE RENT-CHARGES.

power of sale to be exercised by trustees with the consent of D. E.] AND WHEREAS the said —— and ——, in exercise of the said power of sale contained in the said indenture of the —— day of ——, with the consent and approbation of the said D. E., have contracted and agreed with the said F. G. for the absolute sale to him of the hereditaments particularly mentioned in the schedule hereunder written or hereunto annexed, with the appurtenances, being part of the hereditaments comprised in the said indentures of the —— and —— days of —— [*the second settlement*].

—and of a sale under a power in such settlement;

—of the agreement to assign the rent-charges upon certain trusts.

AND WHEREAS, for facilitating the completion of the said sale, the said A. B., at the request of the said D. E., hath agreed to assign the said annual sums or yearly rent-charges of £—— and £—— respectively limited to her and her assigns, as hereinbefore is mentioned, with the powers and remedies for enforcing the payment of the same respectively, unto the said G. H. and I. K., their executors, administrators, and assigns, upon the trusts hereinafter declared of the same.

Witnesseth assignment of the rent-charges to trustees.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, the said A. B., at the request of the said D. E., and with the privity and approbation of the said F. G., (testified by his being a party to and executing these presents), doth by these presents assign unto the said G. H. and I. K., their executors, administrators, and assigns, ALL THOSE the said several annual sums or yearly rent charges of £—— and £—— respectively limited to the said A. B. and her assigns, as hereinbefore is mentioned, and all future payments thereof respectively, and the powers and remedies for recovering and enforcing the payment of the same respectively; AND ALL THE ESTATE, right, title, interest, property, claim and demand whatsoever, both at law and in equity, of her the said A. B., of, in, to, out of, or upon the said premises, or any part thereof;

Habendum to the trustees.

TO HAVE, HOLD, RECEIVE, AND TAKE the said several annual sums or yearly rent-charges of £—— and £——, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said G. H. and I. K., their executors, administrators, and

OF JOINTURE RENT-CHARGES.

assigns, UPON TRUST that they the said G. H. and I. K., and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall from time to time receive and take, and when necessary enforce the payment of the same annual sums or yearly rent-charges respectively, exclusively from and out of such of the said hereditaments charged with the payment of the same respectively, as are not particularly mentioned in the said schedule to these presents, To the intent that the said hereditaments particularly mentioned in the said schedule to these presents may henceforth in equity be freed, exonerated, and discharged of and from the said several annual sums or yearly rent-charges of £—— and £——, and the powers and remedies for enforcing the payment of the same respectively; and, subject and without prejudice to the trusts hereinbefore declared, do and shall stand and be possessed of the said annual sums or yearly rent-charges of £—— and £—— respectively in trust for the said A. B. and her assigns. [*Covenant by A. B. with G. H. and I. K., their executors, administrators, and assigns, against incumbrances, see ante, Vol. 3, p. 249. Power to appoint new trustees and clauses for the indemnity of the trustees, and the payment of their expenses, ante, Vol. 3, p. 294; see too, ante, Vol. 4, pp. 324, 328*]. IN WITNESS &c.

Upon trusts for exonerating the land sold from the payment of the rent-charges.

Covenant against incumbrances.

Trustee clauses.

LX.

RELEASE OF A POWER TO JOINTURE.

RELEASE *of a* POWER *to* JOINTURE *in* LANDS DIRECTED *to be* PURCHASED *with* MONIES *comprised in a Marriage Settlement.*

Recital of settlement creating a power to jointure;

—of the agreement to release the power.

TO ALL TO WHOM these presents shall come, A. B., of &c., sendeth greeting. [*Recital of a marriage settlement directing monies to be laid out in the purchase of lands to be settled to certain uses, and subject to certain powers, including a power (recited verbatim) for A. B. to jointure. Recitals shewing the dealings with and present state of investment of the trust monies.*] AND WHEREAS, at the time of the execution of the indenture lastly hereinbefore recited, it was expressly agreed between the said —— and the said ——, that the said —— should cause or procure the manor, hereditaments, and premises thereby expressed to be conveyed and assigned respectively as aforesaid, to be freed and discharged from the power of jointuring by the said indenture of the —— day of —— [*the settlement*] directed to be inserted in the settlement to be made as therein and hereinbefore is mentioned; And the said A. B., at the request of the said ——, hath agreed to release the same premises accordingly, and so, and in such manner, that not only the several securities intended to be made by the indentures of the —— day of ——, and the —— day of —— respectively, as hereinbefore is mentioned, may not be prejudiced or affected by any exercise of the same power, but that the same manors, hereditaments, and premises may be absolutely discharged and exonerated from the same power.

Witness release of the power.

NOW THESE PRESENTS WITNESS, that, in pursuance of the said agreement, and in consideration of the premises, and of the natural love and affection of the said A. B. for the said ——, and for divers other

RELEASE OF A POWER TO JOINTURE.

good causes and considerations, he the said A. B. doth by these presents release and discharge ALL and singular the manors, lands, tenements, and other hereditaments which shall or may be purchased in pursuance of the trust or direction in that behalf contained in the hereinbefore recited indenture of the —— day of —— [*the settlement*] with the said sum of £—— secured by the hereinbefore recited indenture of the —— day of —— [*the trust fund which had been lent on mortgage*], or any part or parts thereof, or with any sum or sums of money which may arise from any sale or sales which at any time or times during the life of the said A. B. shall be made under the power of sale by the said indenture of the —— day of —— [*the settlement*] directed to be inserted in the settlement to be made, as therein and hereinbefore is mentioned, with their rights, members, and appurtenances; And also all and singular the manors, lands, tenements, and other hereditaments which shall be taken in exchange under the power of exchange by the said indenture of the —— day of —— [*the settlement*] directed to be inserted in the settlement to be made, as therein and hereinbefore is mentioned, with their rights, members, and appurtenances; And also all the said sum of £ —— [*the trust fund*] so as aforesaid secured by the said indenture of the —— day of ——, [*the mortgage deed*]; and any stocks, funds, or securities in or upon which the same, or any part or parts thereof, shall or may be laid out or invested; and any sum or sums of money which may be produced by any sale or sales under the said power of sale by the said indenture of the —— day of —— [*the settlement*] directed to be inserted in the settlement to be made, as therein and hereinbefore is mentioned; and any stocks, funds, or securities in or upon which the same, or any part or parts thereof, shall or may be laid out or invested, of and from the said power of jointuring by the said indenture of the —— day of —— [*the settlement*] directed to be inserted in the settlement, as therein and hereinbefore is mentioned; TO THE END AND INTENT that the same manors, hereditaments, and premises

Parcels.

To the intent that the lands

RELEASE OF A POWER TO JOINTURE.

may be discharged from the power.

may henceforth be discharged and exonerated from the said power of jointuring, and the said A. B. may be barred and absolutely excluded from exercising the same. IN WITNESS &c. (*a*).

(*a*) A memorandum of the release should be indorsed on the settlement, and signed by the releasor. The release itself ought, indeed, to be made by indorsement on the settlement, unless there be some substantial objection to that course.

INDEMNITY DEEDS.

General observations.

THE ordinary cases in which Indemnities are required, are when trustees or executors commit a breach of trust at the instance of part only of the cestui que trusts, and when purchases are made of which the evidence of title is defective, or which are liable to contingent charges, or to charges in common with other property. Indemnities are either personal, resting on bond or covenant only, or are made by a charge on or limitation of real estate: in the former case, the only consideration is the probable ability of the obligor or covenantor; in the latter, the value and title of the estate must be investigated, as on a mortgage. The following Precedents furnish examples of Indemnities of each kind, and both from vendors to purchasers, and from cestui que trusts to trustees and executors. Precedent 59, too (supra, p. 494), though called an equitable release, is more properly an Indemnity; and some of the other Precedents in the collection also contain Indemnities. See further as to Indemnities, ante, Vol. 1, art. INDEMNITY DEEDS; and ante, Vol. 3, p. 68.

LXI.

JOINT *and* SEVERAL BOND *by* VENDORS *to a* PURCHASER *against* LEGACIES *charged on the purchased Lands.*

AGAINST LEGACIES CHARGED ON PURCHASED LANDS.

Bond.

KNOW ALL MEN by these presents, that we, A. B., of &c., and D. B., of &c., are held and firmly bound to E. F., of &c., in the sum of £—— [*double the amount of the legacies to be indemnified against*], to be paid to the said E. F., or to his certain attorney, executors, administrators, or assigns, for which payment to be well and truly

AGAINST LEGACIES CHARGED ON PURCHASED LANDS.

made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this —— day of ——, in the year of our Lord, one thousand eight hundred and —— (*a*).

Recital of will devising lands to vendors charged with contingent legacies

—of the legacies being still contingent;

—of agreement to sell and indemnify against the legacies;

WHEREAS &c. [*Recital of a will devising lands to C. B., the wife of the above-named A. B., for her life, remainder to their son, the above-named D. B., in fee, "he paying £—— thereout to each of his brothers and sisters attaining twenty-one;"—of the testator's death, and of the probate of his will.*] AND WHEREAS the said A. B. hath issue by the said C. B., besides the said D. B., —— children, who are all infants. AND WHEREAS by articles of agreement, bearing date the —— day of ——, and entered into between the said D. B., on behalf of himself and his said father and mother, of the one part, and the above-named E. F. of the other part, the said D. B. did agree to sell, and the said E. F. did agree to purchase, at the sum of £——, to be paid as therein mentioned, the messuages or tenements, lands, and other hereditaments in the said articles of agreement, and hereinafter particularly mentioned, with the appurtenances (being part of the hereditaments devised by the said will of the said [*testator*], as therein and hereinbefore is mentioned); And it was by the said articles of agreement (among other things) agreed that the said A. B. and D. B. should indemnify the said E. F. against the payment of any legacies chargeable on the said estate under the will of the said [*testator*] to the brothers and sisters of the said D. B., who were not yet of the age of twenty-one years, by a bond, in a sufficient penalty, under the hands and seals of the said D. B. and A. B. (*b*).

—of conveyance;

AND WHEREAS, in pursuance of the said articles of agree-

(*a*) See other forms of bonds, infra, p. 504, and Precedent 68.

Articles of agreement for purchase not to be referred to.

(*b*) In most cases it will be best to omit this recital and the reference to it in the subsequent recital of the purchase-deed, and to introduce instead the recital, infra, n. (*c*): for it is not desirable to refer to articles of agreement so as to make them part of the title on subsequent occasions. See, too, infra, Precedent 61.

ment, by an indenture bearing even date with the above-written bond or obligation, and made or expressed to be made between the said A. B. and C. B., of the first part; the said D. B., of the second part; the said E. F., of the third part; and X. Y., of the fourth part; in consideration of the sum of £——, paid or secured to be paid to the said A. B. and D. B., as in the said indenture is mentioned, All &c. [*parcels*] (being the hereditaments so agreed to be purchased by the said E. F., as hereinbefore is mentioned) have been conveyed, assured, and limited to such uses, &c. [*Uses to bar dower, see ante, Vol. 3, p. 210 (c)*. NOW THE CONDITION of the above-written bond or obligation is such, that if the said A. B. and D. B., or either of them, their or either of their heirs, executors or administrators, do and shall from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless, and indemnified the said E. F., his heirs, appointees, executors, administrators, and assigns, and also the said messuages or tenements, lands, and other hereditaments and premises by the hereinbefore recited indenture conveyed, assured, and limited as aforesaid, or expressed and intended so to be, and every of them, and every part thereof, of, from, and against the payment of the legacies or sums of £—— apiece, in and by the said will of the said [*testator*] charged or made payable upon or out of the said hereditaments thereby devised as aforesaid,

AGAINST LEGACIES CHARGED ON PURCHASED LANDS.

ance to the purchaser to uses to bar dower.

Condition of bond.

(*c*) See *supra*, n. (*b*). The recital to be introduced will be to the following effect:— Variation.

"AND WHEREAS, upon the treaty for the purchase of the said hereditaments comprised in the said indenture, it was agreed that the said D. B. and A. B. should execute and give to the said E. F. their joint and several bond in the penal sum of £——, with such condition for making void the same as is hereunder written."

If the charges to be indemnified against necessarily appear on the face of the conveyance, the indemnity may as well, and at less cost, be made by covenant in the conveyance as by bond. But if the charges do not, for other reasons, appear on the conveyance, the indemnity should, of course, be by a separate instrument. When the indemnity to a purchaser may be made by the conveyance.

AGAINST LEGACIES CHARGED ON PURCHASED LANDS.

and every of them, and every part thereof respectively, and all interest to become due for the same respectively, and of, from, and against all actions, suits, accounts, reckonings, claims, and demands whatsoever, for, or upon account, or in respect of the same, or any of them, or any part thereof respectively, or in anywise relating thereto, then the above-written bond or obligation to be void, and of no effect, otherwise to remain in full force and virtue.

LXII.

TO A PURCHASER AGAINST CONTINGENT CLAIMS UNDER ESTATES TAIL.

BOND *of* INDEMNITY *to a* PURCHASER *by a* VENDOR *seised in fee in* REVERSION *expectant on the Deaths of two* SUCCESSIVE TENANTS FOR LIFE, *with Remainder to their* CHILDREN IN TAIL, *one of the Tenants for Life being supposed to be dead, and the other past Child-bearing.*

Bond.

KNOW ALL MEN by these presents, that I, A. B., of &c., [*vendor*], am held and firmly bound to C. D., of &c., [*purchaser*], in the sum of £——, [*double the amount of the purchase-money*], to be paid to the said C. D. or to his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with my seal. Dated this —— day of ——, in the year of our Lord, one thousand eight hundred and —— (*a*).

Recitals of the will;
—of the supposed death of one tenant for life;
—of the other

WHEREAS &c. [*Recitals shewing the state of the title*]: AND WHEREAS it is supposed that the said [*first tenant for life*] died without issue either in the lifetime of the said [*testatrix*], or soon after her decease, but no positive evidence can be obtained of the fact of her death: AND

(*a*) See other forms of bonds, supra, p. 501; and infra, Precedent 68.

TO A PURCHASER AGAINST CONTINGENT CLAIMS UNDER ESTATES TAIL.

WHEREAS the said [*second tenant for life*] is now in possession and receipt of the rents and profits of the said hereditaments by the said recited will devised as aforesaid, but hath no issue, and from her advanced age it is not probable she will ever have any issue. [*Recital of conveyance of the vendor's reversion to the purchaser by deed of even date with the above-written bond*]. AND WHEREAS, upon the treaty for the said purchase, it was agreed that the said A. B. should execute and give unto the said C. D. a bond in the above-mentioned penalty of £——, with such condition for making void the same as is hereunder written. NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*first tenant for life*], or any issue of his body be now living, or if there shall be any issue of the body of the said [*second tenant for life*], lawfully begotten or to be begotten, then and in either of the said cases if the above-bounden A. B., his heirs, executors, or administrators, or any of them, do and shall, upon demand for that purpose made by the said C. D., his executors, administrators, or assigns, well and truly pay or cause to be paid unto the said C. D. the sum of £——, with interest for the same after the rate of £—— per cent. per annum, to be computed from the day of the date of the above-written bond or obligation, or if the said [*first tenant for life*] be now dead without issue, and there shall be no issue of the body of the said [*second tenant for life*] begotten or to be begotten, then and in either of the aforesaid cases the above-written bond or obligation to be void and of no effect, otherwise to remain in full force and virtue.

being past child-bearing;

—of the conveyance to the purchaser;

—of the agreement to indemnify.

Condition of bond.

LXIII.

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

INDEMNITY *against a perpetual* RENT-CHARGE *by* DEMISE *of part of the subject Property to Trustees for a* TERM *of* YEARS. THE ENTIRE PROPERTY *had been sold in* LOTS, *subject to a* CONDITION *that the Rent-Charge should be* EXCLUSIVELY *charged on one Lot, and the remainder of the Estate* INDEMNIFIED *by a Demise* (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*the purchaser of the lot on which the rent-charge is to be charged*], of the first part; C. D., of &c., and E. F., of

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Mode of indemnity against a rent-charge.

(*a*) With respect to the mode of indemnifying the remainder of an estate against a rent-charge, which it is intended shall be borne exclusively by a part, see ante, Vol. 3, p. 75, n. (*c*).

A purchaser cannot be compelled to take his purchase with an indemnity, unless he has expressly agreed to do so, (ante, Vol. 3, p. 68, n. (*d*)); and all well-drawn contracts and conditions, which stipulate that the purchaser shall take an indemnity, also stipulate how the indemnity is to be given. The Precedent in the text (in pursuance of conditions of sale) provides the indemnity, by limiting a term of years to trustees; but (except in the case of incorporeal hereditaments, on which distress or entry cannot be made,) it should be stipulated that the indemnity should be made by a charge only, so that the legal estate in the indemnity lands may not become outstanding. If the contract do not provide in what manner the indemnity is to be given, it seems that the proper mode is to limit to trustees a rent-charge in the indemnity lands of the same amount as the rent-charge to be indemnified against. See ante, Vol. 3, p. 76, n. There will be little difficulty in framing such an indemnity from the Precedent in the text, and from Precedent 19, Vol. 4, p. 575.

It will be proper, though not essential, to indorse a notice of the indemnity deed on the conveyance of the indemnity estate; and, if there be any terms of years affecting the indemnity estate, they should be so assigned as to attend the indemnity trusts, or a notice of the indemnity deed should be indorsed on the assignments.

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

&c. [*trustees of a term*], of the second part; and the several other persons whose names and seals are hereunto subscribed and affixed, (being the purchasers or proprietors of the hereditaments specified in the schedule to these presents), of the third part. WHEREAS the mansion-house or messuage, lands and hereditaments, hereinafter particularly mentioned and intended to be hereby appointed and demised, are subject, together with the hereditaments comprised in the said schedule to these presents, to a perpetual annuity or yearly rent-charge of £——, created by the will of ——, bearing date the —— day of ——: AND WHEREAS the said mansion-house or messuage, lands and hereditaments, intended to be hereby appointed and demised, were, together with the hereditaments comprised in the said schedule, put up for sale by public auction on the —— day of ——, at ——, in —— lots by a printed particular, and subject to certain conditions, the first of the said lots comprising the said mansion or messuage, lands and hereditaments, intended to be hereby appointed and demised: AND WHEREAS the said hereditaments comprised in the said first lot were not sold at the said auction, but were afterwards sold to the said A. B., subject to the said conditions of sale so far as the same applied to a sale by private contract: AND WHEREAS one of the said conditions of sale was, that the estate should be sold subject to the annual payments therein referred to, and to the said perpetual annual rent-charge or sum of £——; but such last-mentioned charge should be exclusively paid by the purchaser of the first lot, and the purchasers of the other lots indemnified from the payment thereof by a demise in the usual way of the said first lot. [*Recital of conveyance of the hereditaments in the first lot to uses to bar dower in favour of A.B., ante, Vol. 3, pp. 209, 210*]. AND WHEREAS for the purpose of performing the said stipulation contained in the said condition of sale with respect to the indemnity of the said hereditaments comprised in the said schedule to these presents against the said annuity or yearly rent-charge of £——, the said A. B., at the request and with the privity of the said several persons, parties to these pre-

Recital that the property to be demised is subject together with that in the schedule to a perpetual rent-charge;

—of the whole property having been put up for sale by auction, subject to conditions, and in lots, the first of which comprised the property to be demised;

—of the first lot not having been sold at the auction, but subsequently by private contract;

—of the condition of sale that the rent-charge should be charged on lot one, and the other property indemnified by a demise of that lot;

—of the conveyance;

—of the agreement to fulfil the condition of sale by executing this deed.

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

sents, of the third part, has agreed to execute these presents. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, and pursuant to, and by force and virtue, and in exercise and execution of the said power or authority to him the said A. B. for this purpose given by the said indenture of the —— day of —— [*the conveyance of lot one*], and of all and every other power or authority in anywise enabling him in this behalf, He the said A. B. doth by these presents direct, limit, and appoint, that ALL THAT mansion-house, or messuage, lands, and hereditaments hereinafter particularly mentioned and intended to be hereby demised, shall henceforth go, remain, and be to the use of the said C. D. and E. F., their executors, administrators, and assigns, for the term of six hundred years, to commence and be computed from the day next before the day of the date of these presents, without impeachment of waste; and upon and for the trusts, intents, and purposes hereinafter declared and expressed of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the considerations aforesaid, and in consideration of the sum of ten shillings to the said A. B. paid by each of them the said C. D. and E. F. at or immediately before the sealing and delivery of these presents, (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth by these presents grant, bargain, sell (*b*), demise and confirm unto the said C. D. and E. F., their executors, administrators, and assigns, ALL THAT &c. [*Parcels—General words*], TO HAVE AND TO HOLD the said capital and other messuages, lands, tenements, hereditaments, and all and singular other the premises hereby demised, or expressed or intended so to be, unto the said C. D. and E. F., their executors, administrators, and assigns, for the term of six hundred years, to commence and be computed from the day next before the day of the date of these presents, without impeachment of waste, and upon and for the trusts, in-

Witnesseth appointment to trustees for a term of years of the lands to be charged.

Witnesseth further demise to the trustees of the same lands.

Habendum for the same term.

(*b*) See ante, Vol. 3, p. 579, n. (*c*).

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

tents, and purposes hereinafter declared and expressed of and concerning the same. AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said hereditaments and premises are hereinbefore appointed and demised to the said C. D. and E. F., their executors, administrators, and assigns, for the said term of six hundred years, UPON TRUST and to the intent that the said hereditaments and premises comprised in the said term of six hundred years may be a protection and indemnity to the several respective purchasers and proprietors of the hereditaments comprised in the said schedule to these presents, their heirs, appointees, and assigns, and to the said hereditaments comprised in the said schedule; and every part thereof, and the appurtenances thereof, of, from, and against the said annuity or yearly rent-charge of £——, and all arrears and future payments thereof, and all powers and remedies for recovering and enforcing the payment of the same, and all actions, suits, distresses, claims, and demands whatsoever, for, or upon account, or in respect of the said annuity or yearly rent-charge, or any part thereof; FOR WHICH END, INTENT, AND PURPOSE, it is hereby agreed and declared, that in case any entry or distress for any arrears, or future payment or payments of the said annuity or yearly rent-charge of £——, or any part thereof, shall at any time or times hereafter be made upon the said messuages, lands, hereditaments, and premises comprised in the said schedule to these presents, or any of them, or any part or parts thereof, or any claim or demand for any arrears, or future payment or payments of the said annuity or yearly rent-charge of £——, or any part thereof, shall be made upon the said respective purchasers or proprietors of the said hereditaments comprised in the said schedule to these presents, or any of them, or their, or any of their heirs, appointees, executors, administrators, or assigns respectively, then, and in every such case, and so often as the same shall happen, they the said C. D. and E. F., their executors, administrators, and assigns, do and shall, by, with, and out of the rents, issues, and profits of the hereditaments hereinbefore appointed and demised, or expressed

Declaration of trust of the term;

—to indemnify the hereditaments in the schedule against the rent-charge;

—and to raise all sums (if any) required for that purpose;

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

sents, of the third part, has agreed to execute these presents. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, and pursuant to, and by force and virtue, and in exercise and execution of the said power or authority to him the said A. B. for this purpose given by the said indenture of the —— day of —— [*the conveyance of lot one*], and of all and every other power or authority in anywise enabling him in this behalf, He the said A. B. doth by these presents direct, limit, and appoint, that ALL THAT mansion-house, or messuage, lands, and hereditaments hereinafter particularly mentioned and intended to be hereby demised, shall henceforth go, remain, and be to the use of the said C. D. and E. F., their executors, administrators, and assigns, for the term of six hundred years, to commence and be computed from the day next before the day of the date of these presents, without impeachment of waste; and upon and for the trusts, intents, and purposes hereinafter declared and expressed of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the considerations aforesaid, and in consideration of the sum of ten shillings to the said A. B. paid by each of them the said C. D. and E. F. at or immediately before the sealing and delivery of these presents, (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth by these presents grant, bargain, sell (*b*), demise and confirm unto the said C. D. and E. F., their executors, administrators, and assigns, ALL THAT &c. [*Parcels—General words*], TO HAVE AND TO HOLD the said capital and other messuages, lands, tenements, hereditaments, and all and singular other the premises hereby demised, or expressed or intended so to be, unto the said C. D. and E. F., their executors, administrators, and assigns, for the term of six hundred years, to commence and be computed from the day next before the day of the date of these presents, without impeachment of waste, and upon and for the trusts, in-

Witnesseth appointment to trustees for a term of years of the lands to be charged.

Witnesseth further demise to the trustees of the same lands.

Habendum for the same term.

(*b*) See ante, Vol. 3, p. 579, n. (*c*).

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

tents, and purposes hereinafter declared and expressed of and concerning the same. AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the said hereditaments and premises are hereinbefore appointed and demised to the said C. D. and E. F., their executors, administrators, and assigns, for the said term of six hundred years, UPON TRUST and to the intent that the said hereditaments and premises comprised in the said term of six hundred years may be a protection and indemnity to the several respective purchasers and proprietors of the hereditaments comprised in the said schedule to these presents, their heirs, appointees, and assigns, and to the said hereditaments comprised in the said schedule, and every part thereof, and the appurtenances thereof, of, from, and against the said annuity or yearly rent-charge of £——, and all arrears and future payments thereof, and all powers and remedies for recovering and enforcing the payment of the same, and all actions, suits, distresses, claims, and demands whatsoever, for, or upon account, or in respect of the said annuity or yearly rent-charge, or any part thereof; FOR WHICH END, INTENT, AND PURPOSE, it is hereby agreed and declared, that in case any entry or distress for any arrears, or future payment or payments of the said annuity or yearly rent-charge of £——, or any part thereof, shall at any time or times hereafter be made upon the said messuages, lands, hereditaments, and premises comprised in the said schedule to these presents, or any of them, or any part or parts thereof, or any claim or demand for any arrears, or future payment or payments of the said annuity or yearly rent-charge of £——, or any part thereof, shall be made upon the said respective purchasers or proprietors of the said hereditaments comprised in the said schedule to these presents, or any of them, or their, or any of their heirs, appointees, executors, administrators, or assigns respectively, then, and in every such case, and so often as the same shall happen, they the said C. D. and E. F., their executors, administrators, and assigns, do and shall, by, with, and out of the rents, issues, and profits of the hereditaments hereinbefore appointed and demised, or expressed

Declaration of trust of the term;

—to indemnify the hereditaments in the schedule against the rent-charge;

—and to raise all sums (if any) required for that purpose;

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

and intended so to be, or any part or parts thereof, or by mortgaging, selling, or leasing the same, or any part thereof, for all or any part of the said term of six hundred years, or by more than one of or by all the ways and means hereinbefore mentioned, or by any other reasonable ways and means, levy and raise such sum and sums of money as the case shall require, or as they or he shall think proper or expedient, and pay, retain, or apply the same in satisfaction and discharge of the said arrears, or future payment or future payments of the said annuity or yearly rent-charge of £——, and of all costs, damages, and expenses whatsoever which the said respective purchasers or proprietors of the said hereditaments comprised in the said schedule to these presents, or any of them, or their or any of their heirs, appointees, executors, administrators, or assigns respectively, shall from time to time pay, sustain, or be put unto by reason or in consequence of such entry, distress, claim, or demand as aforesaid; AND ALL costs and expenses which they the said trustees or trustee for the time being of these presents shall incur or sustain in or about or in anywise relating to the execution of the trusts hereby declared, including all expenses incurred in or about any appointment of new trustees under the power in that behalf hereinafter contained, or in or about any assignments or assurances upon any such appointment of new trustees, or any assurances in pursuance of the covenant for further assurance hereinafter contained. AND IT IS HEREBY FURTHER AGREED and declared between and by the parties to these presents, that in the mean time, and until some entry or distress, claim, or demand shall be made upon the said hereditaments comprised in the said schedule to these presents, or some part thereof in respect of the said annuity or yearly rent-charge of £——, or until the said respective purchasers or proprietors of the said hereditaments comprised in the said schedule to these presents, or some or one of them, or their, or some, or one of their heirs, appointees, executors, administrators, or assigns respectively, shall make some payment in respect of the said annuity or yearly rent-charge of £——, or incur, sustain, or be put unto any such

—and for the payment of the trustees' expenses.

Reversioner to take the rents and profits till the trusts arise.

costs, damages, or expenses as aforesaid, they the said C. D. and E. F., their executors, administrators, and assigns, do and shall permit and suffer the person or persons for the time being immediately entitled to the hereditaments hereinbefore appointed and demised, or intended so to be, in reversion or remainder expectant on the said term of six hundred years, to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said C. D. and E. F., or the survivor of them, or the heirs, executors, or administrators of such survivor, or of the trustees or trustee for the time being acting in the execution of the trusts of these presents, for any sum or sums of money payable under or by virtue of these presents, or in the execution of the trusts hereof, shall be a sufficient and effectual discharge or sufficient and effectual discharges for the money in such receipt or receipts respectively expressed or acknowledged to be received, and that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, and assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application thereof; and that no purchaser, or mortgagee, or other person paying money to the said trustees or trustee, and taking such receipt, shall be bound to see or inquire as to the necessity or propriety of raising the money therein expressed to be received: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if the said trustees hereby appointed, or either of them, or any future trustee or trustees to be appointed as hereinafter is mentioned, shall die, or be abroad for twelve calendar months at one time, or be desirous of being discharged of and from, or refuse or decline, or become incapable to act in the trusts or powers hereby in them reposed, or to them given as aforesaid, before the said trusts or powers shall have been fully executed, performed, or discharged, or shall have become incapable of

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

Trustees' receipt clause.

Power to appoint new trustees.

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

effect, then, and in such case, and when and so often as the same shall happen, it shall be lawful for the surviving or continuing trustee or trustees for the time being, (and for this purpose any trustee or trustees retiring from or declining to act in the aforesaid trusts, shall, if willing to act in the exercise of this present power, be considered a continuing trustee or continuing trustees), or for the executors or administrators of the last surviving or continuing trustee for the time being, by writing under their, his, or her hands or hand, to nominate, substitute, or appoint one or more person or persons to be a trustee or trustees in the stead or place of the trustee or trustees so dying, or being abroad, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid; AND THAT, when and so often as any new trustee or trustees shall be nominated and appointed as aforesaid, All the trust estates, monies, and premises which shall then be vested in the trustee or trustees so being abroad, or desiring to be discharged, or refusing, declining, or becoming incapable to act as aforesaid, either solely or jointly with the other trustee or trustees, or in the surviving trustee or trustees, or in the heirs, executors, or administrators of the last surviving trustee (as the case may be), shall with all convenient speed be conveyed, assigned, and transferred in such sort and manner, and so as that the same shall and may be legally and effectually vested in the surviving or continuing trustee or trustees, and such new and other trustee or trustees; or, if there shall be no continuing trustee or trustees, then in such new trustee or trustees only, upon the trusts hereinbefore declared, or such of the same trusts as may be then subsisting or capable of taking effect. AND IT IS HEREBY AGREED AND DECLARED, that the trustee or trustees so to be nominated, substituted, or appointed as aforesaid, shall and may, either before or after the said trust estates, monies, and premises shall have been so vested in him or them jointly or solely as aforesaid, in all things act and assist in the management, carrying on, and execution of all the trusts and powers aforesaid in conjunction with the other then surviving or continuing trustee

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

or trustees, if there shall be any such surviving or continuing trustee or trustees, and, if not, then by himself or themselves, as fully and effectually, and shall and may have and exercise all the same power and powers, authority and authorities, to all intents, effects, constructions, and purposes whatsoever, as if he or they had been originally in and by these presents nominated a trustee or trustees, and as the trustee or trustees in these presents named, his or their heirs, executors, or administrators, in or to whose place such new trustee or trustees shall come or succeed, are or is enabled to do, or could or might have done, under and by virtue of these presents, if then living and continuing to act in the trusts or powers of these presents. [*Proviso for the indemnity of the trustees and the payment of their expenses, ante, Vol. 4, pp. 326, 328. See, too, the shorter trustee clauses, ante, Vol. 4, p. 329.*] AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and E. F., their executors, administrators, and assigns in manner following, (that is to say), that for and notwithstanding any act, deed, matter or thing whatsoever by him the said A. B. made, done, committed, or executed, or knowingly or willingly suffered to the contrary, the power or authority hereinbefore exercised by the said A. B., or expressed and intended so to be, was well and effectually created, and that the same at the sealing and delivery of these presents is in full force and virtue, and in nowise suspended, extinguished, weakened, or become void; AND THAT, for and notwithstanding any such act, deed, matter, or thing whatsoever as aforesaid, he the said A. B. now hath in himself good right, full power, and lawful and absolute authority to direct, limit, and appoint, and also to demise and confirm the said hereditaments and premises hereinbefore appointed and demised, or expressed and intended so to be, for the said term of six hundred years, in manner aforesaid, according to the true intent and meaning of these presents; AND THAT the said hereditaments and premises hereinbefore appointed and demised, or expressed and intended so to be, shall and may from time to time, and at all times hereafter during the

Trustees' indemnity clause.

Covenants for title;

—for right to appoint and demise;

—for quiet enjoyment;

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

said term of six hundred years, remain and be To the use of the said C. D. and E. F., their executors, administrators, and assigns, and be peaceably and quietly entered into and upon, and be held, possessed, occupied, and enjoyed, and the rents, issues, and profits thereof, and of every part thereof, had, received, and taken by the said C. D. and E. F., their executors, administrators, and assigns accordingly, without the lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by him the said A. B., or his heirs, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them; AND THAT free and clear, and freely and clearly and absolutely acquitted, exonerated, released, and for ever discharged, or otherwise by him the said A. B., his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other estates, titles, troubles, charges, debts, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said A. B. or his heirs, or by any other person or persons lawfully or equitably claiming or to claim by, from, under, or in trust for him, them, or any of them: AND FURTHER, that he the said A. B. and his heirs, and all and every other person or persons having or claiming, or who shall or may have or claim any estate, right, title, interest, inheritance, use, trust, property, claim, or demand whatsoever, either at law or in equity, of, in, to, or out of the said hereditaments and premises hereinbefore appointed and demised, or expressed and intended so to be, or any of them, or any part thereof, by, from, or under, or in trust for him the said A. B. or his heirs, shall and will from time to time, and at all times hereafter, upon every reasonable request to be made for that purpose, by and at the proper costs and charges in the law of the said C. D. and E. F., their executors, administrators, or assigns, make, do, acknowledge, and execute, or cause and procure to be made, done, acknowledged, and executed, All and every such further and other

—free from incumbrances;

—and for further assurance.

BY DEMISE AGAINST A PERPETUAL RENT-CHARGE.

lawful acts, deeds, things, devices, appointments, demises, and assurances in the law whatsoever, for the further, better, more perfectly and absolutely appointing, demising, and assuring of the said hereditaments and premises hereinbefore appointed and demised, or expressed and intended so to be, and every part thereof, To the use of the said C. D. and E. F., their executors, administrators, and assigns, for the said term of six hundred years, in manner aforesaid, according to the true intent and meaning of these presents, as by the said C. D. and E. F., or the survivor of them, or the executors, administrators, or assigns of such survivor, or their or his counsel in the law, shall be reasonably advised, or devised, and required. IN WITNESS &c.

SCHEDULE referred to in the above-written indenture.

LXIV.

INDEMNITY *to a* PURCHASER *against a* LIFE RENT-CHARGE *by a* DEMISE *by the* VENDOR *of the Reversion of certain Lands* (*a*).

AGAINST A RENT-CHARGE BY DEMISE TO A PURCHASER.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*vendor*], of the one part, and C. D., of &c. [*purchaser*], of the other part. [*Recital of a will devising estates in X. and Y. to E. F. for life, with remainder as G. H. should by deed or will appoint, with remainder to G. H. in tail, with remainder to A. B. in fee—of the death of the testator without revoking or altering his will—of the will of G. H., charging the lands in Y. with a rent-charge after the death of E. F., and subject thereto, devising to A. B. in fee—of the death of G. H. without revoking or altering his will—*

Parties.

Recitals as to the title;

(*a*) See supra, p. 506, n. (*a*).

AGAINST A RENT-CHARGE BY DEMISE TO A PURCHASER.

of the conveyance by E. F. and A. B. of the lands in Y. to uses to bar dower in favour of C. D.] AND WHEREAS, on the treaty for the said purchase of the said hereditaments in Y. by the said C. D., it was agreed that the said A. B. should demise the said hereditaments in X. aforesaid (subject to the said life estate therein of the said E. F.) unto the said C. D., his executors, administrators, and assigns, for the term of five hundred years, for indemnifying in manner hereinafter mentioned the said C. D., his heirs, appointees, and assigns, and the said purchased premises, from and against the said annuity or yearly rent-charge of £——, and all arrears and future payments thereof. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement and in consideration of the premises and of the sum of ten shillings, &c. [*demise by A. B. to C. D. of the hereditaments in X., supra, p.* 508]; TO HAVE AND TO HOLD the said messuages, lands, tenements, and hereditaments, and all and singular other the premises hereby demised, or expressed and intended so to be, unto the said C. D., his executors, administrators, and assigns, for the term of five hundred years, to commence and be computed from the day next before the day of the date of these presents, (subject to the said life estate of the said E. F.), without impeachment of waste, and upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; (that is to say), UPON TRUST and to the intent that the said hereditaments and premises comprised in the said term of five hundred years may be a protection and indemnity to the said C. D., his heirs, appointees, and assigns, and the said capital messuage or tenement, and other hereditaments comprised in the said indenture of appointment and release of even date herewith, and every part thereof, from and against the said annuity or yearly rent-charge of £——, and all arrears and future payments thereof, and all powers and remedies for recovering and enforcing the payment of the same, and all actions, suits, claims, and demands whatsoever for, upon account, or in respect of the said annual sum or yearly rent-charge, or any part thereof; FOR WHICH END, intent,

—of the agreement for the indemnity.

Witnesseth demise of lands to the purchaser.

Habendum, for a term of five hundred years.

Upon trust to indemnify himself and the purchased hereditaments against the rent-charge;

—and to raise

and purpose it is hereby agreed and declared, that in case any entry or distress for any arrears or future payment or payments of the said annual sum or yearly rent-charge of £——, or any part thereof, shall at any time or times after the decease of the said E. F. be made upon the said capital messuage or tenement, and other hereditaments comprised in the said indenture of appointment and release of even date herewith, or any of them, or any part or parts thereof, or if any claim or demand for any arrears or future payment or payments of the said annuity or yearly rent-charge of £——, or any part thereof, shall be made upon the said C. D., his heirs, appointees, executors, administrators, or assigns, Then and in every such case and so often as the same shall happen, the said C. D., his executors, administrators, or assigns, do and shall, by, with, and out of the rents, issues, and profits of the hereditaments comprised in the said term of five hundred years, or any part or parts thereof, or by mortgaging, selling, or leasing the same or any part thereof, for all or any part of the said term of five hundred years, or by more than one of or by all the ways and means hereinbefore mentioned, or by any other reasonable ways and means, levy and raise such sum and sums of money as the case shall require, or as he or they shall think proper or expedient, and pay, retain, or apply the same in satisfaction and discharge of the said arrears or future payment or payments of the said annual sum or yearly rent-charge of £——, and of all costs, damages, and expenses whatsoever, which he the said C. D., his heirs, appointees, executors, administrators, or assigns shall from time to time sustain or be put unto by reason or in consequence of such entry, distress, claim, or demand as aforesaid, or in or about the execution of the trusts hereby declared. AND IT IS HEREBY FURTHER AGREED and declared between and by the parties to these presents, that in the mean time and until the said C. D., his heirs, appointees, executors, administrators, or assigns, shall be obliged to make any such payment, or incur, sustain, or be put unto any such costs, damages, or expenses as aforesaid, He the said C. D., his executors, administrators, and assigns, do

AGAINST A RENT-CHARGE BY DEMISE TO A PURCHASER.

all sums (if any) required for that purpose, or for defraying costs;

—but to allow the reversioner to take the profits till the trusts arise.

AGAINST A RENT-CHARGE BY DEMISE TO A PURCHASER.

and shall permit and suffer the person or persons for the time being entitled to the hereditaments comprised in the said term of five hundred years, to receive and take the rents, issues, and profits thereof to and for his and their own use and benefit; PROVIDED ALWAYS, and it is hereby further agreed and declared between and by the parties to these presents, that when the trusts hereinbefore declared of and concerning the said term of five hundred years shall have been fully performed or satisfied, or have become unnecessary or incapable of taking effect, and the said C. D., his executors, administrators, and assigns, shall have been fully reimbursed and satisfied all costs, charges, and expenses (if any) to be occasioned by or relating to the trusts hereby reposed in him and them as aforesaid, (and which he and they are hereby authorized and empowered to levy and raise by all or any of the ways and means aforesaid, or by any other reasonable ways and means, and to retain accordingly), the said term of five hundred years shall (subject and without prejudice to any disposition which shall have been made of the premises comprised therein, or any part thereof, in pursuance of the trusts aforesaid) absolutely cease and determine. [*Receipt clause, supra, p.* 511. *Covenants by A. B. with C. D., his executors, administrators, and assigns, for right to demise—quiet enjoyment—free from incumbrances, and further assurance, pp.* 513, 514]. IN WITNESS &c.

Proviso for cesser of term.

Covenants.

LXV.

DEED *of* INDEMNITY *to Mortgagees against* PIN MONEY *and* PORTIONS *charged on the mortgaged Estate:* AS TO THE PIN MONEY, *by limiting a* TERM *in an Estate of which the* MORTGAGOR *is* TENANT *for* LIFE; AND AS TO THE PORTIONS, *by limiting a* TERM *in an Estate of which he is seised in* FEE-SIMPLE, *and by his* COVENANT *to* SURRENDER COPYHOLDS.

AGAINST PIN MONEY AND PORTIONS.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*mortgagor*], of the first part; C. D., of &c., E. F., of &c., G. H., of &c., and I. K., of &c., [*mortgagees*], of the second part; and L. M., of &c., and N. O., of &c., [*trustees*], of the third part. WHEREAS &c. [*Recital of a settlement and subsequent events, by virtue of which the mortgagor is seised in fee of the mortgaged estate, subject to a term of ninety-nine years for raising pin-money for his wife C. B. during their joint lives, and to a term of one thousand years for raising portions—of the mortgage of even date with the present deed*]. AND WHEREAS under or by virtue of certain indentures of lease and release, bearing date respectively the —— and —— days of ——, the release being made or expressed to be made between [*parties*], (being a settlement made in pursuance of articles entered into previously to and in consideration of the marriage between the said A. B. and the said C. B.), the said A. B. is seised or entitled, subject to a term of five hundred years by the said indenture of release now in recital limited to the said —— and ——, their executors, administrators, and assigns, upon certain trusts therein mentioned, for raising certain annual sums therein mentioned, in exoneration of certain other hereditaments charged therewith, of or to an estate for his own life in possession of and in the manors or lordships, and

Parties.

Recital of the title to the mortgaged estate and of the mortgage;

—of the mortgagor being tenant for life of another estate;

AGAINST PIN-MONEY AND PORTIONS.

other hereditaments, particularly mentioned and comprised in the first schedule hereunder written, or hereunto annexed, with the appurtenances: AND WHEREAS, previously to and at the time of the execution of the indentures of lease and release hereinbefore recited, the said A. B. was seised or entitled in fee-simple in possession of or to such of the hereditaments particularly mentioned and comprised in the second schedule hereunder written or hereunto annexed as are of freehold tenure, and was entitled for an estate to him and his heirs, according to the respective customs of the manors of which the same are respectively holden, of and in all such of the said hereditaments particularly mentioned and comprised in the second schedule to these presents as are of copyhold or customary tenure, with the appurtenances: AND WHEREAS upon the treaty for the loan of the aforesaid sum of £—— to the said A. B., it was agreed between the said A. B. and the said C. D., E. F., G. H., and I. K., that the said A. B. should make and execute such indemnity against the said annual sum of £—— so as aforesaid provided to be raised under the trusts of the said term of ninety-nine years by way of pin-money, and against the said monies so as aforesaid raiseable under the trusts of the said term of one thousand years, as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, and in consideration of the sum of ten shillings to the said A. B. paid by the said C. D., E. F., G. H., and I. K., at or before the sealing and delivery of these presents, (the receipt of which said sum of ten shillings he the said A. B. doth hereby acknowledge), He the said A. B., at the request of the said C. D., E. F., G. H., and I. K., (testified by their respectively being parties to and executing these presents), Doth by these presents grant, bargain, sell, and demise (*a*) unto the said L. M. and N. O., their executors, administrators, and assigns, the said manors or lordships and other hereditaments particularly mentioned and comprised in the first schedule hereunder written or hereunto annexed; And also

—and owner in fee of other freehold and copyhold estates;

—of the agreement for the indemnity.

Witnesseth demise to trustees.

(*a*) See ante, Vol. 3, p. 379, n. (*c*).

all, or so many, or such part and parts of the said hereditaments particularly mentioned and comprised in the said second schedule hereunder written or hereunto annexed, as are or is of freehold tenure. [*General words*]. To HAVE AND TO HOLD the said manors or lordships and other hereditaments particularly mentioned and comprised in the first schedule to these presents, with their rights, members, easements, and appurtenances, unto the said L. M. and N. O., their executors, administrators, and assigns, for the term of one hundred years, to commence and be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, without impeachment of waste: Nevertheless, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared or contained of or concerning the same; AND TO HAVE AND TO HOLD the said manors or lordships and other hereditaments particularly mentioned and comprised in the said second schedule to these presents, with their rights, members, easements, and appurtenances, (subject nevertheless to the conveyance made by the hereinbefore recited indentures of the —— and —— days of ——, and the trusts thereof), unto the said L. M. and N. O., their executors, administrators, and assigns, for the term of eight hundred years, to commence and be computed from the day next before the day of the date of these presents, and thenceforth next ensuing, and fully to be complete and ended, without impeachment of waste: Nevertheless, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared, or contained of or concerning the same: AND IT IS HEREBY AGREED AND DECLARED, that the said L. M. and N. O., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said manors or lordships, hereditaments and premises hereinbefore granted and demised, for the term of one hundred years, and of and in their rights, members, easements, and appurtenances for and during the same term, UPON TRUST

AGAINST PIN-MONEY AND PORTIONS,

Habendum as to part for 100 years;

—and as to the other part for 800 years.

Trusts of the term of 100 years;

—to raise and

AGAINST PIN-MONEY AND PORTIONS.

that they the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, do and shall during the joint lives of the said A. B. and C. B., by, with, and out of the yearly rents, issues, and profits of the same manors or lordships, hereditaments and premises, or by mortgaging, selling, or otherwise disposing of the same premises, or any part or parts thereof, for all or any part of the said term of one hundred years, or by bringing actions against the tenants or occupiers of the premises for the rent then in arrear, or by all or any of the said ways or means, or by any other reasonable ways or means, levy and raise the annual sum of £——, clear of all deductions whatsoever, And pay and apply and dispose of the same by quarterly payments, &c., [*trust for the separate use without power of anticipation of C. B., verbatim as the trust of the annual sum raiseable under the trusts of the term of ninety-nine years*], on the —— day of ——, the first quarterly payment of the said annual sum of £—— to be made on the —— day of —— next, if both the said A. B. and C. B. shall be then living, and the said annual sum of £—— to be in satisfaction of the annual sum of £——, raiseable as aforesaid under the trusts of the said term of ninety-nine years, to the intent that the hereditaments comprised in the said term of ninety-nine years may, as between the said C. D., E. F., G. H., and I. K., their heirs, executors, administrators, and assigns, and the said A. B., his heirs, executors, administrators, and assigns, be wholly exonerated and discharged therefrom: AND UPON FURTHER TRUST, that they the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, or their or his assigns, do and shall from time to time, by all or any of the ways or means aforesaid, levy and raise such sum or sums of money (if any) as shall or may be required for indemnifying and saving harmless the said C. D., E. F., G. H., and I. K., their heirs, executors, administrators, and assigns, from and against all costs or expenses whatsoever which they or any of them shall or may sustain or be put unto by reason or in consequence of any action, suit, or other proceeding whatsoever, which may

pay the annual sum payable to the mortgagor's wife out of the mortgaged estate, so as to exonerate the mortgaged estate;

—and to raise all costs and other expenses which may be incurred in respect of such annual sum, and indemnify the mortgagees.

AGAINST PIN-MONEY AND PORTIONS.

be brought, commenced, or instituted for raising any sum or sums of money under the trusts of the said term of ninety-nine years, or in anywise relating thereto, And do and shall apply and dispose of the sum or sums of money so to be levied and raised as last aforesaid accordingly; And, subject to the trusts hereinbefore declared of the said term of one hundred years, do and shall stand and be possessed of and interested in the said hereditaments and premises therein comprised, In trust for the said A. B. and his assigns. [*Proviso for cesser, supra, p.* 518; *and ante, Vol.* 4, *p.* 510.] AND IT IS HEREBY AGREED AND DECLARED, that the said L. M. and N. O., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said manors or lordships, hereditaments and premises hereinbefore granted and demised for the said term of eight hundred years, and of and in their rights, members, easements, and appurtenances for the same term, IN ORDER AND TO THE INTENT that the same may be a protection and indemnity to all and singular the said messuages or hereditaments and premises comprised in the said term of one thousand years, and conveyed by the hereinbefore recited indenture of the —— day of —— instant, [*the mortgage*], from all and every sum and sums of money (whether annual or in gross) which shall or may become raiseable under the trusts of the same term as hereinbefore mentioned or referred to, FOR WHICH END AND INTENT it is hereby agreed and declared, that they the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, do and shall from time to time, by selling, mortgaging, or otherwise disposing of the said hereditaments and premises comprised in the said term of eight hundred years, for all or any part of the same term, or by and out of the rents, issues, and profits of the same premises, or by bringing actions against the tenants or occupiers of the same premises, or any of them, or any part or parts thereof, for the rents then in arrear, or by more than one or by all of the aforesaid ways and means, or by any other reasonable ways or means, levy and raise, and pay, discharge, and satisfy, all and every such sums and

Trusts of the term of 800 years to exonerate the mortgaged estate in respect of the trusts of a term subsisting therein for raising portions;

—and raise the necessary monies accordingly;

AGAINST PIN-MONEY AND PORTIONS.

sum of money as under or by virtue of the trusts in and by the firstly hereinbefore recited indenture of release declared of and concerning the term of one thousand years thereby limited to the said —— and ——, their executors, administrators, and assigns, as hereinbefore is mentioned, shall at any time or times hereafter be or become raiseable for the portion or portions of any child or children of the said A. B. by the said C. B., or any interest for the same respectively, or for the maintenance or education of any such child or children: AND UPON FURTHER TRUST, that they the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, do and shall from time to time, by all or any of the ways or means aforesaid, levy and raise such sum or sums of money (if any) as shall or may be required for indemnifying and saving harmless the said C. D., E. F., G. H., and I. K., their heirs, executors, administrators, and assigns, from and against all costs, charges, and expenses whatsoever which they or any of them shall or may incur or be put unto by reason or in consequence of any action, suit, or other proceeding whatsoever, which may be commenced or instituted for raising any sum or sums of money under the trusts of the said term of one thousand years, or in anywise relating thereto, And do and shall apply and dispose of the sum or sums of money so to be levied and raised as last aforesaid accordingly: AND IT IS HEREBY agreed and declared between and by the parties to these presents, that the rents, issues, and profits of the said hereditaments comprised in the said term of eight hundred years shall, subject and without prejudice to the trusts hereinbefore declared, be had and received by the person or persons who for the time being shall be entitled to the same hereditaments, in reversion or remainder, expectant on the determination of the same term, to and for his and their own use and benefit. [*Proviso for cesser of the term of eight hundred years, see supra, p.* 518; *and ante, Vol.* 4, *p.* 510.] AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the hereinbefore recited agreement, and in consideration of the premises, He the said A. B., at the request of the said C. D., E. F., G. H., and I. K., (testified as

—and also such monies as may be required for the payment of expenses.

Rents and profits subject to the term to be in trust for the reversioner.

Proviso for cesser.

Witnesseth further covenant to surrender copyholds to the trustees

hereinbefore is mentioned), Doth covenant with the said L. M. and N. O., their heirs and assigns, that he the said A. B. or his heirs shall and will, at his or their proper costs and charges, make, do, and execute all such surrenders and assurances as by the said L. M. and N. O., their heirs or assigns, shall be required, for vesting the said copyhold hereditaments particularly mentioned and comprised in the said second schedule to these presents, with their appurtenances, (subject and without prejudice to any surrender or surrenders by way of mortgage which may be made to the use of the said C. D., E. F., G. H., and I. K., their heirs and assigns, or otherwise, in pursuance of the aforesaid agreements entered into between the said A. B., and the said C. D., E. F., G. H., and I. K., as hereinbefore is mentioned), in them the said L. M. and N. O., their heirs and assigns, UPON AND FOR such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations as shall and may as nearly correspond with and be similar to the trusts, intents, and purposes, powers, provisoes, agreements, and declarations hereinbefore declared and contained of and concerning the freehold hereditaments comprised in the said second schedule to these presents, as the different nature and qualities of the same several estates and the rules of law and equity will permit (*b*). [*Trustees' receipt clause, supra, p.* 511—*Power to appoint new trustees, supra, p.* 511—*Clauses for the indemnity of trustees and the payment of their expenses, ante, Vol.* 4, *pp.* 326, 328: *and the shorter forms, p.* 329—*Covenants for right to demise—quiet enjoyment—free from incumbrances, and for further assurance, supra, pp.* 513, 515.] IN WITNESS &c.

AGAINST PIN-MONEY AND PORTIONS.

upon corresponding trusts.

FIRST SCHEDULE referred to in the above-written Indenture.

SECOND SCHEDULE referred to in the above-written Indenture.

(*b*) See ante, Vol. 4, p. 547, n. (*t*).

LXVI.

AGAINST THE REPAIRS OF A CHANCEL.

DEED *of* INDEMNITY *to the* OWNERS *of great Tithes against the* REPAIRS *of the* CHANCEL *of a* PARISH CHURCH (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*grantor, and owner of part of the great tithes*], of the first part; C. D., of &c. [*owner of other part of the great tithes*], of the second part; E. F., of &c. [*owner of other part*], of the third part; G. H., of &c. [*owner of other part*], of the fourth part; and I. K. [*covenantee*], of the fifth part. WHEREAS the said A. B., being seised of or entitled to the fee-simple and inheritance of and in divers manors, lands, and hereditaments situate in —— and elsewhere, in the county of ——, and amongst them of the rectory or parsonage impropriate of the parish of X., and of the tithes and appurtenances thereunto belonging, (subject to a mortgage in fee made thereof by indentures of lease and release, bearing date the —— and —— days of ——, the release being made or expressed to be made be-

Recital of the grantor's having been seised in fee (subject to a mortgage) of a rectory and great tithes—of the sale and conveyance of part of the tithes—of the mortgage having been paid off, and the

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Necessity and mode of indemnity to rectorial property against the repairs of a chancel.

(*a*) The parson or impropriator of a church is bound of common right to keep the chancel in repair. Burn's Ecclesiastical Law, tit. CHURCH *Repairs;* Watson's Clergyman's Law, cap. 39, pp. 394, 395. Hence, when part of the tithes or other property belonging to an impropriator are sold, or the whole is sold in lots, it becomes necessary to provide for the repairs of the chancel, and this is usually done by charging the whole liability on a specified part of the subject-property, and making that an indemnity to the remainder. The Precedent in the text provides for the exoneration of the whole rectory and tithes by charging the liability on a new estate, but it may with little trouble be made to meet the case of an exoneration of part of the property by a charge on the remainder. See, too, supra, Precedent, 63, p. 506. If the indemnity is to be given on the tithes a term must be created, because no rent-charge could be limited in them, nor any distress or entry be made upon them. Co. Lit. 47. a, 142. a; Gilb. Rent, 20, 22.

AGAINST THE REPAIRS OF A CHANCEL.

tween [*parties*], for securing the principal sum of £—— and interest (£——, part thereof, and interest to the said ——, and £——, remaining part thereof, and interest to the said ——), and which mortgage and the said principal monies thereby secured afterwards became vested in the said —— and ——), lately sold to the said C. D., E. F., and G. H., severally and respectively, several parts of the lands and hereditaments whereof he the said A. B. was seised or entitled as aforesaid, situate in the said parish of X., with the rectorial tithes arising, renewing, and increasing out of, upon, and from the same lands and hereditaments so sold, and also the rectorial tithes arising, renewing, and increasing out of, upon, and from other lands situate in the said parish of X., which said tithes were part and parcel of the impropriate rectory of X. aforesaid; and the inheritance in fee-simple of and in the same messuages, lands, tithes, and hereditaments so sold, hath been conveyed unto and to the use of or in trust for or subject to appointment by the respective purchasers thereof; and out of the purchase-monies which have arisen from the said sales, the said principal sums of £—— and £——, secured by the said hereinbefore mentioned mortgage, and all interest due in respect thereof, have been paid and discharged, and the legal estate of and in the several manors, messuages, lands, impropriate rectory, (save such part of the tithes thereof as have been sold and conveyed as aforesaid), and hereditaments remaining unsold, hath been granted and conveyed by the said mortgagees unto and to the use of the said A. B. and his heirs: AND WHEREAS the said rectory impropriate of X. is subject to the expense of keeping in repair the chancel of the parish church of X., and to the payment of certain pensions and procurations amounting annually to £——: AND WHEREAS, as the messuages, lands, tithes, and hereditaments sold by the said A. B. as aforesaid, were so sold free from incumbrances, and the said A. B. may hereafter be disposed to sell the rectorial tithes of other lands situate in the said parish of X., the said A. B. is desirous, as far as may be, to free, exonerate, and discharge from the repairs of the said chancel,

estate conveyed to the grantor and purchasers;

—of the rectory being liable to repair the chancel, and to certain annual payments;

—of the agreement to discharge and indemnify the rectory and tithes against the liability to such repairs and payments.

AGAINST THE REPAIRS OF A CHANCEL.

and from the said pensions and procurations, amounting annually to £——, and all other payments whatsoever now issuing out of or charged upon the said rectory impropriate, as well the rectorial tithes so sold and conveyed as aforesaid, as also the said rectory impropriate, and the tithes unsold and remaining part thereof, and for that purpose hath agreed and determined to make and execute these presents. NOW THIS INDENTURE WITNESSETH, that, in order to effectuate the purpose aforesaid, and in consideration of the premises, He the said A. B. doth for himself, his heirs and assigns, subject and charge ALL THOSE, &c. [*parcels—general words*], TO AND WITH the payment of all expenses hereafter to be incurred in maintaining and supporting the chancel of the church of X. aforesaid in repair, AND TO AND WITH the pensions and procurations, and all and every or any other payments or payment whatsoever now issuing out of or in anywise charged or chargeable upon the said rectory impropriate, or the tithes belonging thereto, or any part thereof respectively, IN ORDER and to the intent that the same pieces or parcels of meadow land and hereditaments, so hereby subjected and charged therewith, may at all times hereafter be a protection and indemnity to the said rectory impropriate, and also to the several tithes part thereof so sold and granted or conveyed to the aforesaid purchasers, from and against the same expenses, pensions, procurations, and payments whatsoever, and every part thereof respectively. AND THIS INDENTURE ALSO WITNESSETH, that for further effectuating the purpose aforesaid, and in consideration of the premises, he the said A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said I. K. and his heirs, and also with each of them the said C. D., E. F., and G. H., his heirs, and assigns, in manner following; (that is to say), that if at any time or times hereafter any claim or demand shall be made upon any of the owners or proprietors for the time being of the said tithes so sold and conveyed as aforesaid, or of the tithes belonging to the said impropriate rectory and now remaining unsold, or any part or

Witnesseth charge of certain lands with the repairs and payments aforesaid,

—In order to indemnify the rectory and tithes.

Witnesseth further—grant of powers of distress to the owners of the tithes and the trustees in order to effectuate such indemnity.

parts thereof, for the expenses of keeping in repair the chancel of the said parish church, or for the said pensions, procurations, or other payments whatsoever, or for any part or parts of the same respectively, and the person or persons upon whom such claim or demand shall be so made, or any of them, or the said tithes so sold and conveyed as aforesaid, or the said rectory impropriate and the tithes belonging thereto now remaining unsold, or any of them, or any part or parts thereof, shall, by reason or in consequence of such claim or demand, or any other act, deed, matter, or thing whatsoever relating thereto, be compelled or obliged to pay or answer any sum or sums of money, or incur, sustain, or be put unto any costs, charges, damages, or expenses whatsoever, then and in such case, and so often as the same shall happen, it shall be lawful for the person or persons for the time being upon whom such claim or demand shall be so made, and who shall so be compelled or obliged to pay any such sum or sums of money, or incur, sustain, or be put unto any such costs, charges, damages, or expenses as aforesaid, into and upon the said pieces or parcels of meadow land, hereditaments, and premises hereinbefore mentioned and hereby charged and made subject by way of protection and indemnity as aforesaid, or expressed and intended so to be, and every or any part thereof, to enter and distrain, and the distress and distresses then and there found to dispose of according to law, to the intent that thereby or otherwise all the sums of money, costs, charges, damages, and expenses which he, they, or any of them shall have paid, incurred, sustained, or been put unto, for or on account of the expenses of keeping the said chancel in repair, or for or on account of the said pensions, procurations, or other payments, or any of them, or any part thereof respectively, or by reason or in consequence of the nonpayment of the said expenses of repair, pensions, procurations, or other payments, or any of them, or any part or parts thereof respectively, together with all costs, charges, and expenses attending such distress and distresses, shall be fully paid and satisfied. AND THE SAID A. B. doth hereby for himself, his heirs, execu-

AGAINST THE REPAIRS OF A CHANCEL.

Covenants for title;

AGAINST THE REPAIRS OF A CHANCEL.

tors, and administrators, covenant with the said I. K. and his heirs, and also with each of them the said C. D., E. F., and G. H., his heirs and assigns, that he the said A. B., at the time of the sealing and delivery of these presents, is lawfully, rightfully, and absolutely seised of or well and sufficiently entitled to the said lands, hereditaments, and premises hereinbefore subjected and charged, or expressed and intended so to be, and every part thereof, for a good, sure, perfect, absolute, and indefeasible estate of inheritance in fee-simple, without any manner of condition, use, trust, property, power of revocation or limitation of any use or uses, or any other restraint, cause, matter, or thing whatsoever, to alter, change, charge, defeat, incumber, revoke, or make void the same; AND THAT he the said A. B. now hath in himself good right, full power, and absolute authority to subject and charge the said lands, hereditaments, and premises hereinbefore subjected and charged, or expressed and intended so to be, in manner aforesaid, according to the true intent and meaning of these presents.

—for right to charge;

—and for further assurance.

AND FURTHER, that he the said A. B., and his heirs, and all and every other persons and person lawfully or equitably claiming or to claim by, from, under, or in trust for him, them, or any of them, or by, from, or under any of his ancestors, shall and will from time to time, and at all times hereafter, upon the request of the said I. K. or his heirs, or of any of them the said C. D., E. F., and G. H., or their respective heirs, appointees, or assigns, or any other person interested in the premises, but at the costs and charges of the person or persons requiring the same, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, and assurances in the law for the further and more effectually or more satisfactorily charging the said expenses, pensions, procurations, and other payments upon the said hereditaments and premises hereinbefore charged or expressed and intended so to be by way of protection and indemnity as aforesaid, as by any of the parties interested in the premises, or their or any of their counsel in the law, shall be reasonably advised or devised and required. IN WITNESS &c.

LXVII.

DEED *of* INDEMNITY *to the* PURCHASER *of an* ESTATE, *the* TITLE *to which commences at too* RECENT *a period, and is otherwise* DEFECTIVE. THE PURCHASE-MONEY *is* INVESTED *in the Names of* TRUSTEES *upon the Trusts declared by the present Deed.*

DECLARATION OF TRUST OF THE PURCHASE-MONEY OF AN ESTATE WITH A DEFECTIVE TITLE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], of the first part; The —— Railway Company [*purchaser*], of the second part; and C. D., of &c., and E. F., of &c., [*the trustees*], of the third part. [*Recital of the conveyance from A. B. to the railway company, setting out the parcels at length.*] AND WHEREAS on the treaty for the said purchase, the solicitors for the said A. B. delivered to the solicitor of the said company an abstract of title of the said A. B. to the said plot or parcel of ground and other hereditaments so as aforesaid conveyed to the said company, and the title shewn by such abstract commenced with the will of one G. H., bearing date the —— day of ——, 1813, whereby the said G. H. devised all his real and copyhold estates to trustees upon certain trusts therein mentioned, for raising money for payment of debts, and subject thereto for his the testator's daughters, under which trustees and their cestui que trusts the said A. B. derived title; and it was alleged by the solicitors for the said A. B., that the whole of the title deeds and evidences of title prior to the will of the said G. H. were lost, but they produced a declaration of one X. Y., bearing date the —— day of ——, and made under the provisions of an act of Parliament passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled "An act," &c.], [*see 5 & 6 Will. 4, cap. 62*], from which declaration it appeared that the said G. H., the testator,

Parties.

Recital of conveyance;

—of the defects in the title;

DECLARATION OF TRUST OF THE PURCHASE-MONEY OF AN ESTATE WITH A DEFECTIVE TITLE.

was in 1791, or thereabouts, in the receipt of the rents and profits of the said plot or parcel of ground and other hereditaments so as aforesaid conveyed to the said company, and that he and his family continued in such receipt and were the reputed owners of the same premises until about fifteen years ago, when the said A. B. became and was considered to be the owner of the same, which period of fifteen years agrees with the date of the conveyance to the said A. B. set out in the abstract: AND WHEREAS it has been agreed between the said company and the said A. B., that the whole purchase-money for the said plot or parcel of ground and other hereditaments so as aforesaid conveyed to the said company, shall be paid by the said A. B. to the said C. D. and E. F., to be held by them upon the trusts hereinafter declared: AND WHEREAS in pursuance of the said agreement the said A. B. has paid to the said C. D. and E. F. the said purchase-money or sum of £——. NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, it is hereby agreed and declared between and by the parties to these presents, that the said C. D. and E. F., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sum of £——, UPON AND FOR such trusts, intents, and purposes as will make the same a full and complete indemnity to the said —— Railway Company, their successors and assigns, against any estate, right, title, interest, claim, and demand whatsoever which any person or persons whosoever now has or have or shall or may have in, to, out of, or upon the said plot or parcel of ground and other hereditaments comprised in and conveyed by the said indenture of even date herewith, or any part or parcel of the same premises, and which any person shall establish in any court of law or equity within the space of sixty years, to be computed from the 31st day of December, 1791, and also for making good to the said —— Railway Company all and every sums and sum of money, losses, damages, costs, charges, and expenses which they the said —— Railway Company may pay, sustain, incur, or become liable to by reason or in

—of the agreement that the purchase-money shall be paid to certain trustees on the trusts to be declared by the present deed;

—of the payment accordingly.

Witnesseth declaration of trust of the money.

To form a perfect indemnity to the purchaser against all claims to be made for sixty years from a certain date;

consequence of any such estate, right, title, interest, claim, or demand as aforesaid; FOR WHICH END AND PURPOSE it is hereby agreed and declared between and by the parties to these presents, that the said C. D. and E. F., and the survivor of them, and the executors or administrators of such survivor, shall, with the consent in writing of the said A. B., lay out or invest the said sum of £—— in their or his names or name, in the purchase of a competent share or shares of some or one of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales (but not in Ireland), or in the purchase of any freehold or copyhold hereditaments in England or Wales of an estate of inheritance, the title to which, on the same being purchased, to be approved by counsel; and do and shall from time to time, upon the request in writing of the said A. B., his heirs, executors, administrators, or assigns, alter, vary, or transpose such stocks, funds, securities, or investments in land for any other such stocks, funds, securities, or investments as aforesaid, and do and shall continue upon such stocks, funds, securities, or investments, the said sum of £——, or so much thereof as shall not be wanted for the purposes of the indemnity intended to be hereby made, until the expiration of sixty years from the 31st day of December, 1791; AND DO AND SHALL stand and be possessed of and interested in the said sum of £——, and the stocks, funds, securities, and hereditaments in or upon or in the purchase of which the said trust-monies shall from time to time be invested, and the interest, dividends, annual produce, rents, issues, and profits thereof respectively, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same; (that is to say), UPON TRUST that they the said C. D. and E. F., and the survivor of them, and the executors or administrators of such survivor, do and shall pay to or permit the said A. B., his heirs, executors, administrators, and assigns, for the residue of the said term of sixty years, to be computed as aforesaid, to receive and take the interest, dividends, annual produce, rents, issues, and profits of the said trust-monies,

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—and for that purpose to invest the same;

—and hold such investments,

—in trust for the residue of the term of sixty years to permit the vendor to receive the income till the purchaser be disturbed;

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and the stocks, funds, securities, and hereditaments in or upon which the same shall from time to time be laid out or invested, when and as the same shall accrue due, for his and their own use and benefit, until some entry shall be made upon the said premises comprised in the said indenture of even date herewith, or some action, suit, or other proceeding shall be commenced, instituted, or taken at law or in equity, within the said space of sixty years, upon or for or in respect of some claim or demand or interest thereon or therein by any person or persons whomsoever; And also to permit him and them, from time to time, to receive all or so much and such part (if any) of such interest, dividends, annual produce, rents, issues, and profits, after every or any such entry, action, suit, or other proceeding being so made, commenced, instituted, or taken, as shall not be applicable under the trusts hereinafter declared; AND IN CASE any such entry, action, suit, or other proceeding shall be so made, commenced, instituted, or taken within the said period of sixty years, Then upon trust that they the said C. D. and E. F., and the survivor of them, and the executors or administrators of such survivor, do and shall thenceforth, until the release or abandonment of the claim, to enforce which such entry, action, suit, or other proceeding shall have been made, commenced, instituted, or taken, or until there shall be a verdict or decree as to the claim of the person or persons by whom or in whose behalf such entry, action, suit, or other proceeding shall have been made, commenced, instituted, or taken, receive the interest, dividends, annual produce, rents, issues, and profits of the said trust-monies, and the stocks, funds, securities, and hereditaments in or upon which the said trust-monies shall from time to time be laid out or invested, and lay out such interest, dividends, annual produce, rents, issues, and profits, in their or his names or name, in the purchase of a competent share or shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales (but not in Ireland), and receive the interest, dividends, and annual produce of the said last-mentioned stocks, funds, and secu-

—and after such disturbance, in trust to accumulate the income;

rities, and repeat the said receipts and investments so as that all such interest, dividends, annual produce, rents, issues, and profits, and the resulting income thereof, may accumulate in the way of compound interest: AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that the said C. D. and E. F., and the survivor of them, and the executors or administrators of such survivor, do and shall, in case the claims to enforce which any such action, suit, or other proceeding shall have been commenced, shall be released or abandoned, or there shall be a verdict or decree against the person or persons by whom or in whose behalf the same shall have been made, commenced, instituted, or taken, pay and transfer to the said A. B., his heirs, executors, administrators, or assigns respectively, the interest, dividends, annual produce, rents, issues, and profits which shall have been retained by reason of such claim, and the stocks, funds, and securities in or upon which the same shall have been laid out or invested, and all the accumulations thereof, for his and their own use and benefit, unless some other entry, action, suit, or other proceeding shall within the said period of sixty years have been made, commenced, instituted, or taken, and the claim of the person or persons making, commencing, instituting, or taking the same, shall not have been released, abandoned, or decided upon, in which case the trust for accumulation lastly hereinbefore contained shall be continued until such other entry, action, suit, or other proceeding, or every such entry, action, suit, or other proceeding shall have been released, abandoned, or decided upon, although the same shall not be released, abandoned, or decided upon within the said space of sixty years; AND FROM time to time, when and so often as any such entry, action, suit, or other proceeding shall be made, commenced, instituted, or taken within the said period of sixty years, the interest, dividends, annual produce, rents, issues, and profits of the said trust-monies, stocks, funds, securities, and hereditaments shall be accumulated in the manner and for such time as is mentioned in the trusts hereinbefore contained; and such accumulations shall, upon the failure of the

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—and if the disturbance be successfully repelled, pay the accumulations to the vendor;

—and so from time to time upon any other disturbance during the sixty years.

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claim of the person claiming, be applied in such manner as is hereinbefore provided as to the accumulations firstly hereinbefore mentioned: AND IT IS HEREBY AGREED AND DECLARED, that in case there shall be any such entry, action, suit, or other proceeding as aforesaid, within the said period of sixty years, and the person or persons making, commencing, instituting, or taking the same, his or their heirs, executors, or administrators, shall obtain or procure a verdict, decree, or judgment in his or their favour, then and in that case the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, shall, by and out, or by selling and disposing of the said trust-monies, stocks, funds, securities, and trust hereditaments, and the interest, dividends, annual produce, rents, issues, and produce thereof, and by and out of such accumulations as aforesaid, (such interest, dividend, annual produce, rents, issues, and profits as shall be in hand, and all such accumulations as aforesaid, being previously applicable), levy and raise all and every such sums and sum of money as shall be sufficient to pay, reimburse, satisfy, and discharge, unto the said —— Railway Company, all losses, costs, charges, and expenses which they shall have incurred, paid, sustained, or become liable to for, or by reason, or in consequence of every or any such entry, action, suit, or other proceeding, and pay and apply the money so to be levied and raised accordingly: AND IT IS HEREBY AGREED AND DECLARED, that in case the said —— Railway Company shall be evicted from all or any part of the said purchased premises, the said sum of £—— shall, for the purposes of estimating the loss of the said —— Railway Company, be taken to be the value of the same premises: AND IT IS HEREBY AGREED AND DECLARED, that, subject to the trusts hereinbefore created, the said C. D. and E. F., and the survivor of them, and the heirs, executors, and administrators of such survivor, shall stand and be possessed of and interested in the said sum of £——, and the stocks, funds, securities, and hereditaments in or upon which the same shall from time to time be laid out or invested, and the interest, dividends, annual produce, rents, issues, and profits of the same, and

And in case any disturbance be successful, in trust out of the trust funds, so far as they will extend, to make good the losses of the purchaser.

The sum invested to be deemed the value of the premises.

Ultimate trust for the vendor.

the resulting income and accumulations of the same, or so much thereof as shall remain after satisfaction of, or not be applied for any of the trusts and purposes aforesaid, In trust for the said A. B., his heirs, executors, administrators, and assigns respectively, for his and their own proper use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that no entry, action, suit, or other proceeding shall be considered to be hereby provided and indemnified against if the same shall be made, commenced, instituted, or taken with the consent and connivance, directly or indirectly, of the said —— Railway Company. AND THE SAID Company do hereby for themselves, their successors and assigns, covenant with the said A. B., his executors and administrators, that if any such entry, action, suit, or other proceeding as aforesaid shall be so made, commenced, instituted, or taken within the said period of sixty years, then and in such case they the said Company, their successors or assigns, shall and will immediately thereupon give information thereof to the said A. B., his heirs, executors, administrators, or assigns. [*Trustees' receipt clause, see supra, p.* 511; *Power to A. B.*, "his executors or administrators, and the said Company, or their successors," *to appoint new trustees, see supra, p.* 511; *Clauses for the indemnity of trustees and the payment of their expenses, see supra, p.* 513.] IN WITNESS &c.

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Proviso as to any disturbance with connivance of the purchaser.

Covenant by the purchaser to give notice to the vendor of any disturbance.

Trustee clauses.

LXVIII.

TO THE TRUSTEES OF A SETTLEMENT.

BOND *of* INDEMNITY *to the* TRUSTEES *of a* SETTLEMENT *on* PAYING *over the* TRUST FUNDS *to a* CESTUI QUE TRUST *absolutely entitled thereto, subject to a Life Interest in his Wife if she survive him* (*a*).

Bond.

KNOW ALL MEN by these presents, that I, A. B., of &c., [*the husband*], am held and firmly bound to C. D., of &c., E. F., of &c., and G. H., of &c., [*executors of the surviving trustee of the settlement*], in the sum of £——, [*double the amount of the principal sum paid over*], to be paid to the said C. D., E. F., and G. H., or to their certain attorney, executors, administrators, or assigns, for which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them firmly by these presents. Sealed with my seal. Dated this —— day of ——, in the year of our Lord one thousand eight hundred and —— (*b*).

Recitals, shewing that the obligor is entitled to certain trust funds, subject to his

WHEREAS &c. [*Recital of settlement, whereby £——, 3 per cent. Consolidated Bank Annuities, in the names of trustees, were settled, In trust for the obligor for life, then for his wife for life, and then for the obligor abso-*

Wife's life interest in reversion expectant on her husband's death in personal estate inalienable.

(*a*) When personal estate is settled upon trust for a husband for his life, and after his death for the wife for her life, or upon trust, in the first instance, for the wife for her life, (without a trust for her separate use), the husband and wife cannot make any effectual disposition against the wife as to that interest, which she will enjoy if she survive her husband. *Stiffe* v. *Everitt*, 1 My. & Cra. 37. For that life-estate which the wife may enjoy after her husband's death, is, during the coverture, a reversionary interest in personal estate, and consequently inalienable, according to the well-known rule established by *Purdew* v. *Jackson*, 1 Russ. 1.

(*b*) See other forms of bonds, *supra*, pp. 501 and 504.

TO THE TRUSTEES OF A SETTLEMENT.

lutely—of the death of one trustee—of the will of the other trustee, appointing C. D., E. F., and G. H. his executors—of his death and of the probate of his will]. AND WHEREAS the said C. D., E. F., and G. H., at the request of the said A. B. and C. B., on the —— day of ——, sold the said sum of £—— 3 per cent. Consolidated Bank Annuities, and with the privity and approbation of the said C. B. paid to the said A. B. the sum of £——, the net monies produced by such sale: AND WHEREAS, in order to induce the said C. D., E. F., and G. H. to sell the said sum of £—— 3 per cent. Consolidated Bank Annuities, and pay the monies arising thereby to him the said A. B. as hereinbefore is mentioned, the said A. B. agreed to give to the said C. D., E. F., and G. H. the bond or obligation of him the said A. B. in the above-mentioned penalty, with such condition for making good the same as is hereunder written: NOW THE CONDITION of the above-written bond or obligation is such, that if the said A. B., his heirs, executors, or administrators, shall and do at all times hereafter save, defend, keep harmless, and indemnified the said C. D., E. F., and G. H., and every of them, their and every of their heirs, executors, and administrators, and their and every of their estates and effects, of, from, and against all actions, suits, accounts, reckonings, claims, and demands whatsoever, either at law or in equity, which the said C. B., or any person or persons claiming under or in trust for her or in her behalf, or any other person or persons whomsoever, shall or may commence, prosecute, have, claim, challenge, or demand against or upon the said C. D., E. F., and G. H., or any of them, their or any of their heirs, executors, or administrators, or their or any of their estates or effects, for or on account of any dividends of the said sum of £—— 3 per cent. Consolidated Bank Annuities, or any part thereof, or by reason of the sale so as aforesaid made of the said sum of £—— 3 per cent. Consolidated Bank Annuities, or of the payment so as aforesaid made to him the said A. B. of the monies arising by such sale, And of and from all and all manner of losses, damages, costs, charges, and expenses to be incurred, sustained, or

wife's life interest, if she survive him;

—of the sale of the funds and payment to the obligor of the purchase-money;

—of the agreement to indemnify.

Condition of the bond.

TO THE TRUSTEES OF A SETTLEMENT.

borne by the said C. D., E. F., and G. H., or any of them, their or any of their heirs, executors, or administrators, by reason or in consequence of such sale and payment or otherwise in relation to the premises, Then the above-written bond or obligation to be void and of no effect, otherwise to remain in full force and virtue.

LXIX.

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

INDEMNITY *to* TRUSTEES *upon* TRANSFERRING *part of certain* TRUST FUNDS *to the Person entitled to a Life Interest in the whole, and also to the Residue of the Fund, after Payment of certain Sums of Money payable thereout, upon his Decease.* COVENANT *by the Transferree to* INDEMNIFY, *and* DEMISE *of Real Estates for a* TERM *of* YEARS *by one of the Trustees.* PROVISO, *that* NO LIEN *shall be created in the Estates comprised in the Term in favour of the Persons entitled to the Trust Monies.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*cestui que trust giving the indemnity*], of the first part; C. D., of &c. [*trustee joining in giving the indemnity*], of the second part; and E. F., of &c., and G. H., of &c., [*the other two trustees*], of the third part. WHEREAS by an indenture bearing date the —— day of ——, and made or expressed to be made between [*parties*], it was agreed and declared that the said C. D., E. F., and G. H. should stand and be possessed of and interested in the sum of £—— Three per cent. Consolidated Bank Annuities, therein mentioned to have been transferred into their names, Upon trust that they the said trustees, and the survivors and survivor of them, and the executors and administrators of such survivor, should from time to time pay and apply the dividends, interest, and annual produce of the said sum of £—— Three per cent. Consolidated Bank Annuities, unto

Recital of a settlement under which a person is entitled for life to the income of certain trust funds, and to the residue after payment at his death of certain gross sums;

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

the said A. B. and his assigns during his life, and immediately after his decease should sell and dispose of the said sum of £—— Three per cent. Consolidated Bank Annuities, and by, with, or out of the monies produced therefrom, pay and apply the sum of £—— sterling unto ——, and the sum of £—— sterling unto ——, in satisfaction and discharge of certain portions or sums of £—— and £—— directed to be raised and paid as in the said indenture now in recital is mentioned, and should stand and be possessed of and interested in the residue (if any) of the money arising from the sale of the said sum of £—— Three per cent. Consolidated Bank Annuities, after the payment of the said two several sums of £—— and £—— as aforesaid, In trust for the legal personal representatives of the said A. B., to be applied and disposed of as part of his personal estate, or in case the sale of the said sum of £—— Three per cent. Consolidated Bank Annuities should not produce the sum of £—— [*the total of the two sums to be paid*], then should pay and apply the whole of the money arising from such sale, so far as the same would extend, towards payment and satisfaction of the said two sums of £—— and £—— equally, without any priority or preference. [*Recital of a will under which C. D. is entitled (subject to a rent-charge to A. B. for life, and to certain portions) to certain lands in fee-simple, and of the testator's death.*] AND WHEREAS the said C. D., E. F., and G. H., have this day, at the request of the said A. B., transferred the sum of £—— Three per cent. Consolidated Bank Annuities, part of the said sum of £—— Bank Annuities, into the name of the said A. B.: AND WHEREAS, previously to such transfer being made as aforesaid, the said A. B. agreed to enter into the covenant hereinafter on his part contained, for indemnifying the said trustees in relation thereto; And whereas the said C. D., in order to induce the said E. F. and G. H. to join with him in making such transfer as aforesaid, and at the request of the said A. B., agreed to grant and demise the said manor of —— and other freehold estates in ——, devised by the said will of the said [*testator*] as hereinbefore is mentioned, to the

—of the title of one of the trustees to real estate;

—of the trustees having transferred part of the trust fund to the tenant for life;

—of the agreement, that the transferree should covenant to indemnify the trustees; and that one of the trustees should demise certain real estate to his co-trustees for further indemnity.

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

said E. F. and G. H., their executors, administrators, and assigns, for the term of one thousand years, upon the trusts intended to be hereinafter declared of and concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the premises, He the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., E. F., and G. H., their executors and administrators, and also as a separate covenant with each of them the said C. D., E. F., and G. H., his executors and administrators, that he the said A. B., his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the said C. D., E. F., and G. H., and every of them, their and every of their heirs, executors, and administrators, of, from, and against all actions, suits, accounts, reckonings, claims, demands, losses, damages, costs, charges, and expenses whatsoever (if any), for or by reason or in consequence of any insufficiency of the said sum of £—— Three per cent. Consolidated Bank Annuities (the residue remaining invested in the names of the said C. D., E. F., and G. H., of the said sum of £—— like bank annuities), for the full payment and satisfaction of the said several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred in procuring proper receipts, releases, and discharges for the same respectively, or otherwise in relation to the premises. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises and in consideration of the sum of ten shillings to the said C. D. paid by the said E. F. and G. H., at or immediately before the sealing and delivery of these presents (the receipt whereof he, the said C. D., doth hereby acknowledge), he the said C. D., at the request of the said A. B. (testified by his being a party to and sealing and delivering these presents), doth by these presents grant, bargain, sell (*a*), and demise unto the said E. F. and G. H.,

Witnesseth covenant by the transferree to indemnify the trustees against loss on account of having made the transfer.

Witnesseth demise by one of the trustees to his co-trustees of certain real estate.

(*a*) See ante, Vol. 3, p. 579, n. (*c*).

their executors, administrators, and assigns, the said manor or lordship of ——, and all and singular other the freehold messuages, farms, lands, tenements, and hereditaments at or in —— aforesaid, devised by the said will of the said [*testator*], as hereinbefore is mentioned, [*general words*]; TO HAVE AND TO HOLD the said manor or lordship, messuages, farms, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore granted, bargained, sold, and demised, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, for the term of one thousand years, to commence and be computed from the day next before the day of the date of these presents, without impeachment of waste, and upon and for the trusts, intents, and purposes hereinafter expressed or declared of and concerning the same; (that is to say) UPON TRUST and to the intent that the said hereditaments and premises may be a protection and indemnity to the said E. F. and G. H., and each of them, their and each of their heirs, executors, and administrators, from and against any loss or damage whatsoever, by reason or in consequence of the insufficiency of the said sum of £—— Three per cent. Consolidated Bank Annuities, (the residue remaining invested in the names of the said trustees of the said sum of £—— like annuities), for the full payment and satisfaction of the said several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred in procuring proper receipts, releases, and discharges for the same respectively, or otherwise in relation to the premises; FOR WHICH PURPOSE, it is hereby agreed and declared, that if, upon the decease of the said A. B., the money to arise from the sale of the said sum of £—— Three per cent. Consolidated Bank Annuities, [*the residue remaining invested in the names of the trustees of the original sum of Bank Annuities*], shall be insufficient to pay and satisfy the said two several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred as aforesaid, Then, and in such case, they the said E. F. and G. H., or the survivor of

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

Habendum for a term of years;

—for the purpose of indemnifying themselves against losses on account of having made the transfer before mentioned;

—by the means mentioned;

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

said E. F. and G. H., their executors, administrators, and assigns, for the term of one thousand years, upon the trusts intended to be hereinafter declared of and concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the premises, He the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., E. F., and G. H., their executors and administrators, and also as a separate covenant with each of them the said C. D., E. F., and G. H., his executors and administrators, that he the said A. B., his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the said C. D., E. F., and G. H., and every of them, their and every of their heirs, executors, and administrators, of, from, and against all actions, suits, accounts, reckonings, claims, demands, losses, damages, costs, charges, and expenses whatsoever (if any), for or by reason or in consequence of any insufficiency of the said sum of £—— Three per cent. Consolidated Bank Annuities (the residue remaining invested in the names of the said C. D., E. F., and G. H., of the said sum of £—— like bank annuities), for the full payment and satisfaction of the said several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred in procuring proper receipts, releases, and discharges for the same respectively, or otherwise in relation to the premises. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises and in consideration of the sum of ten shillings to the said C. D. paid by the said E. F. and G. H., at or immediately before the sealing and delivery of these presents (the receipt whereof he, the said C. D., doth hereby acknowledge), he the said C. D., at the request of the said A. B. (testified by his being a party to and sealing and delivering these presents), doth by these presents grant, bargain, sell (*a*), and demise unto the said E. F. and G. H.,

Witnesseth covenant by the transferree to indemnify the trustees against loss on account of having made the transfer.

Witnesseth demise by one of the trustees to his co-trustees of certain real estate.

(*a*) See ante, Vol. 3, p. 579, n. (*c*).

their executors, administrators, and assigns, the said manor or lordship of ——, and all and singular other the freehold messuages, farms, lands, tenements, and hereditaments at or in —— aforesaid, devised by the said will of the said [*testator*], as hereinbefore is mentioned, [*general words*]; TO HAVE AND TO HOLD the said manor or lordship, messuages, farms, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore granted, bargained, sold, and demised, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, for the term of one thousand years, to commence and be computed from the day next before the day of the date of these presents, without impeachment of waste, and upon and for the trusts, intents, and purposes hereinafter expressed or declared of and concerning the same; (that is to say) UPON TRUST and to the intent that the said hereditaments and premises may be a protection and indemnity to the said E. F. and G. H., and each of them, their and each of their heirs, executors, and administrators, from and against any loss or damage whatsoever, by reason or in consequence of the insufficiency of the said sum of £—— Three per cent. Consolidated Bank Annuities, (the residue remaining invested in the names of the said trustees of the said sum of £—— like annuities), for the full payment and satisfaction of the said several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred in procuring proper receipts, releases, and discharges for the same respectively, or otherwise in relation to the premises; FOR WHICH PURPOSE, it is hereby agreed and declared, that if, upon the decease of the said A. B., the money to arise from the sale of the said sum of £—— Three per cent. Consolidated Bank Annuities, [*the residue remaining invested in the names of the trustees of the original sum of Bank Annuities*], shall be insufficient to pay and satisfy the said two several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred as aforesaid, Then, and in such case, they the said E. F. and G. H., or the survivor of

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

Habendum for a term of years;

—for the purpose of indemnifying themselves against losses on account of having made the transfer before mentioned;

—by the means mentioned;

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

said E. F. and G. H., their executors, administrators, and assigns, for the term of one thousand years, upon the trusts intended to be hereinafter declared of and concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the premises, He the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., E. F., and G. H., their executors and administrators, and also as a separate covenant with each of them the said C. D., E. F., and G. H., his executors and administrators, that he the said A. B., his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the said C. D., E. F., and G. H., and every of them, their and every of their heirs, executors, and administrators, of, from, and against all actions, suits, accounts, reckonings, claims, demands, losses, damages, costs, charges, and expenses whatsoever (if any), for or by reason or in consequence of any insufficiency of the said sum of £—— Three per cent. Consolidated Bank Annuities (the residue remaining invested in the names of the said C. D., E. F., and G. H., of the said sum of £—— like bank annuities), for the full payment and satisfaction of the said several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred in procuring proper receipts, releases, and discharges for the same respectively, or otherwise in relation to the premises. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises and in consideration of the sum of ten shillings to the said C. D. paid by the said E. F. and G. H., at or immediately before the sealing and delivery of these presents (the receipt whereof he, the said C. D., doth hereby acknowledge), he the said C. D., at the request of the said A. B. (testified by his being a party to and sealing and delivering these presents), doth by these presents grant, bargain, sell (*a*), and demise unto the said E. F. and G. H.,

Witnesseth covenant by the transferree to indemnify the trustees against loss on account of having made the transfer.

Witnesseth demise by one of the trustees to his co-trustees of certain real estate.

(*a*) See ante, Vol. 3, p. 579, n. (*c*).

their executors, administrators, and assigns, the said manor or lordship of ——, and all and singular other the freehold messuages, farms, lands, tenements, and hereditaments at or in —— aforesaid, devised by the said will of the said [*testator*], as hereinbefore is mentioned, [*general words*]; BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

To HAVE AND TO HOLD the said manor or lordship, messuages, farms, lands, tenements, and hereditaments, and all and singular other the premises hereinbefore granted, bargained, sold, and demised, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, for the term of one thousand years, to commence and be computed from the day next before the day of the date of these presents, without impeachment of waste, and upon and for the trusts, intents, and purposes hereinafter expressed or declared of and concerning the same; (that is to say) UPON TRUST and to the intent that the said hereditaments and premises may be a protection and indemnity to the said E. F. and G. H., and each of them, their and each of their heirs, executors, and administrators, from and against any loss or damage whatsoever, by reason or in consequence of the insufficiency of the said sum of £—— Three per cent. Consolidated Bank Annuities, (the residue remaining invested in the names of the said trustees of the said sum of £—— like annuities), for the full payment and satisfaction of the said several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred in procuring proper receipts, releases, and discharges for the same respectively, or otherwise in relation to the premises; FOR WHICH PURPOSE, it is hereby agreed and declared, that if, upon the decease of the said A. B., the money to arise from the sale of the said sum of £—— Three per cent. Consolidated Bank Annuities, [*the residue remaining invested in the names of the trustees of the original sum of Bank Annuities*], shall be insufficient to pay and satisfy the said two several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred as aforesaid, Then, and in such case, they the said E. F. and G. H., or the survivor of

Habendum for a term of years;

—for the purpose of indemnifying themselves against losses on account of having made the transfer before mentioned;

—by the means mentioned;

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

them, or the executors or administrators of such survivor, do and shall, by and out of the rents, issues, and profits of the said hereditaments and premises, or by demising, leasing, mortgaging, or selling the same premises, or any part thereof, for all or any part of the said term of one thousand years, or by bringing actions against the tenants or occupiers of the said premises, or by all or any of the ways and means aforesaid, or by any other reasonable ways or means, levy and raise such sum or sums of money as shall be sufficient for paying and satisfying so much and such part or parts of the said sums of £—— and £——, and of any interest to become due for the same respectively, and of any costs, charges, or expenses to be incurred in procuring proper receipts, releases, and discharges for the same respectively, or otherwise in relation to the premises, as the monies to arise from the sale of the said sum of £—— Three per cent. Consolidated Bank Annuities [*the residue of the original sum of Bank Annuities*] shall be insufficient to pay and satisfy, and for paying or satisfying all such losses, damages, costs, charges, or expenses (if any) as the said E. F. and G. H., or either of them, or their or either of their heirs, executors, or administrators, shall or may sustain, incur, or be put unto by reason or in consequence of any insufficiency as aforesaid, or in or about the execution of the trusts of the said term of one thousand years, And do and shall pay and apply the money to be raised as aforesaid in or towards satisfaction and discharge of the same accordingly; AND UPON THIS FURTHER TRUST, that they the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, do and shall, subject and without prejudice to the trusts hereinbefore declared from time to time, permit and suffer the said C. D., his heirs and assigns, to receive and take the rents, issues, and profits of the said hereditaments and premises for his and their proper use. [*Proviso for cesser of the term, supra, p.* 518; *and ante, Vol.* 4, p. 510. *Trustees' receipt clause, supra, p.* 511]: PROVIDED ALWAYS, and it is hereby agreed and declared, that nothing herein contained shall be deemed or considered to give any lien upon the hereditaments and premises

—and subject to the preceding trusts to allow the reversioner to take profits.

Clauses.

Proviso that no lien shall be created on the demised estate in favour of the persons entitled

comprised in the said term of one thousand years to any person or persons entitled to or interested in the said sums of £—— and £——, or either of them, or any part thereof, or any interest for the same respectively, and that the acknowledgment in writing of the said E. F. and G. H., or their respective executors or administrators, to be indorsed on these presents, that the trusts aforesaid of the said term of one thousand years have been satisfied, or have become unnecessary or incapable of taking effect, shall be conclusive evidence thereof, and of the cesser of the said term under the proviso in that behalf hereinbefore contained. [*Clauses for the indemnity of the trustees, and the payment of their expenses, supra, p.* 513. *Covenants by C. D. with E. F. and G. H., their executors, administrators, and assigns, for good right to demise—for quiet enjoyment after the decease of A. B. during the term of one thousand years—free from incumbrances—and for further assurance, supra, pp.* 513—515.] IN WITNESS &c.

BY COVENANT AND DEMISE TO TRUSTEES ON PARTING WITH TRUST FUNDS.

to the gross sums payable out of the trust funds.

Clauses.

Covenants.

LXX.

BOND *of* INDEMNITY *from the* TRANSFERREE *mentioned in the last Precedent to the* TRUSTEE *who demised his Real Estate for a Term of Years for* INDEMNIFYING *his* CO-TRUSTEES *from liability by reason of their having transferred part of certain Trust Funds.*

COUNTER INDEMNITY.

KNOW ALL MEN, &c. [*Bond from A. B. to C. D., supra, p.* 504].

Bond.

WHEREAS &c. [*Recital of the settlement and of the transfer of part of the trust-funds, ut supra, pp.* 540, 541—*and of the last Precedent, so far as relates to the demise and the trusts declared of the term, supra, pp.* 542—544.] AND WHEREAS, in order to induce the said C. D. to make and

Narrative recitals.

Recital of agreement to give bond.

COUNTER INDEMNITY.

execute such grant and demise by way of indemnity as aforesaid, the said A. B. agreed to give and execute to the said C. D. a bond in the above-mentioned penalty, with such condition for making void the same as is hereunder written:

Condition of bond.

NOW THE CONDITION of the above-written bond or obligation is such, that if the said A. B., his heirs, executors, or administrators, shall and do, with and out of his proper monies, provide for, and pay and satisfy the insufficiency (if any) of the said sum of £—— Three per cent. Consolidated Bank Annuities, (the residue remaining invested in the names of the said C. D., E. F., and G. H., of the said sum of £—— like annuities), for the full payment and satisfaction of the said several sums of £—— and £——, and all interest for the same respectively, and all costs, charges, or expenses to be incurred in procuring proper receipts, releases, or discharges for the same respectively, or otherwise in relation to the premises, and shall and do from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified the said C. D., his heirs, executors, and administrators, and his and their estates and effects, from and against all actions, suits, accounts, reckonings, claims, demands, losses, damages, costs, charges, and expenses, by reason or in consequence of the said grant, bargain, sale, and demise having been so made and executed by him the said C. D. as aforesaid, or in anywise relating thereto; And also do and shall, as soon after the decease of the said A. B. as the case will admit, and at the proper costs and charges of his executors or administrators, cause or procure the residue which shall be then to come of the said term of one thousand years of and in the said hereditaments and premises to be surrendered and assigned to him the said C. D., his heirs or assigns, or as he or they shall direct, freed and absolutely discharged of and from the trusts declared of the same in and by the said indenture of even date with these presents as aforesaid; Then the above-written bond or obligation to be void and of no effect, but otherwise to remain in full force and virtue.

LXXI.

INDEMNITY *by such of the* RESIDUARY LEGATEES *under a Will as are* ABSOLUTELY *entitled, and* QUALIFIED ASSENT *by such as are* TRUSTEES, *to the* EXECUTORS, *for* REMITTING *one Debt and* DEFERRING *to sue for another* (*a*).

TO EXECUTORS FOR REMITTING AND GIVING TIME FOR PAYMENT OF DEBTS.

THIS INDENTURE, made &c., BETWEEN ——, [*residuary legatees absolutely entitled*], of the first part; ——, [*residuary legatees, trustees for persons incapable of assenting*], of the second part; and A. B., of &c., C. D., of &c., and E. F., of &c., [*the executors, who were also residuary legatees*], of the third part. [*Recital of the will—of the death of the testator and of the probate of his will.*] AND WHEREAS part of the property of the said [*testator*] consists of two bonds, one for £——, and the other for £——, from G. H.: AND WHEREAS it has been represented to the said A. B., C. D., and E. F., that the said G. H. is unable to pay any part of the said sums of £—— and £——; and that an attempt to compel payment of the said sums of

Parties.

Recital of will;

—of two debts outstanding;

—of the advantage to be derived for the estate by re-

(*a*) If an executor release or remit a debt due to the testator, he is chargeable for a devastavit to the amount of the debt. Williams on Executors, Pt. 4, Bk. 2, Ch. 2, sect. 2, tit. *Devastavit*. So, if he accept a composition for a debt, he is liable for the part he remits; or if he give time for payment of a debt, he is liable for the whole amount from his so giving time, whether all or any part of it is ultimately recovered or not. Id. See too, supra, p. 15, n. (*s*). If, however, the release or compromise appear to have been for the benefit of the estate, the executor will not be guilty of a devastavit; *Blue* v. *Marshall*, 3 P. Wms. 381; but the question, what is for the benefit of the estate, is so difficult to be determined, that no prudent executor will release or compromise a debt, unless upon an authority from all his cestui que trusts, or a sufficient indemnity. It is, however, the practice in modern wills to give the executors full powers to release, compromise, and give time for the payment of debts. See supra, pp. 14, 15.

Executors guilty of a devastavit for releasing or compounding a debt due to the testator.

TO EXECUTORS FOR REMITTING AND GIVING TIME FOR PAYMENT OF DEBTS.

£—— and £——, or either of them, or any part thereof, would not at present be attended with any advantage, and would destroy the chance of ultimately recovering any part of the same sums; and that in the peculiar circumstances in which the said G. H. is placed, it is not probable that, while he continues under the liability to pay the whole of the said sums of £—— and £——, he will be able to pay either of them; but if he be released from the said sum of £——, it is probable that he will be able to pay the said sum of £——, inasmuch as an opening in business is now presented to the said G. H., if his liability under the said bond for £—— be discharged, while he is excluded from availing himself of such opening if he remains liable to both the said sums: AND WHEREAS under these circumstances the said several persons, parties to these presents, are satisfied so far as they have the means of judging, that it will be for the benefit of the estate of the said [*testator*] to cancel the said bond of the said G. H. for £——, and to defer to sue upon the said bond for £——, and the said several persons, parties to these presents of the first part, have agreed to authorize the said A. B., C. D., and E. F., so far as they the said several persons, parties to these presents of the first part, are respectively entitled to cancel the said bond for £——, and to defer to sue upon the said bond for £——, and have also agreed to indemnify the said A. B., C. D., and E. F., in manner hereinafter mentioned against the claims of such of the legatees under the said will of the said [*testator*] as have not authorized the said A. B., C. D., and E. F. to cancel the said bond for £——, or to defer to sue on the said bond for £——; and the said several persons, parties to these presents of the second part, not being competent to consent, have agreed to execute these presents for the purpose of testifying that they respectively believe that the cancelling of the said bond for £——, and the deferring to sue on the said bond for £——, will be for the advantage of the estate of the said [*testator*]: AND WHEREAS it has been agreed that these presents shall contain the provisions and clauses hereinafter contained. NOW THIS

—mitting one of the debts, and deferring to sue for the other;

—of the agreement by the legatees to authorize such remission, and to indemnify the executors by the present deed;

—to contain the provisions inserted.

TO EXECUTORS FOR REMITTING AND GIVING TIME FOR PAYMENT OF DEBTS.

INDENTURE WITNESSETH, that, in pursuance of the said agreements and in consideration of the premises, each of them the said several persons parties hereto of the first part, so far as relates to his and her own acts and deeds, and the acts and deeds of his and her heirs, executors, and administrators, doth for himself and herself, his and her heirs, executors, and administrators, covenant with the said A. B., C. D., and E. F., their executors and administrators, by these presents, that they the said several persons parties to these presents of the first part respectively, and their respective heirs, executors, and administrators, or some or one of the same persons, their or some or one of their heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless, and indemnified the said A. B., C. D., and E. F., and each of them, their and each of their heirs, executors, and administrators, and their and each of their estates and effects, of, from, and against all actions, suits, losses, damages, costs, expenses, accounts, reckonings, claims, and demands whatsoever, for, upon account, or in respect of the said A. B., C. D., and E. F., or any of them, cancelling the said bond for £——, or deferring to sue upon the said bond for £——, or for, upon account, or in respect of any act, deed, matter, or thing in anywise relating to the premises. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that no one of the said several persons, parties to these presents of the first part, shall be subject under the covenant hereinbefore contained to the payment of any sum or sums of money exceeding altogether in amount the sum or sums of money he or she shall have actually received under the said will of the said [*testator*]; AND EACH of them the said several persons parties to these presents of the first part, so far as relates to his and her own acts and deeds, and the acts and deeds of his and her heirs, executors, and administrators, doth hereby for himself and herself, and his and her heirs, executors, and administors, covenant with the others and each of the others of them, the said several persons parties to these presents of

Witnesseth covenant by the residuary legatees absolutely entitled to indemnify the executors for remitting one debt, and deferring to sue for the other.

Limitation of each legatee's liability to the amount of his own share of the testator's estate.

Mutual covenants of the legatees to contribute ratably to the indemnity.

TO EXECUTORS FOR REMITTING AND GIVING TIME FOR PAYMENT OF DEBTS.

the first part, their, his, and her executors and administrators, that each of them the said several persons parties to these presents of the first part, his and her heirs, executors, and administrators, shall and will contribute his and her rateable share, which, according to the amount of his and her share under the said will of the said [*testator*], he and she respectively ought to contribute towards the indemnity of the said executors in pursuance of the covenant firstly hereinbefore contained; and in case any of them the said several persons parties hereto of the first part, their, his, or her heirs, executors, or administrators, shall pay more than they, he, or she ought to pay towards the indemnity of the said executors according to the amount of their, his, or her shares or share under the said will, shall and will pay to them, him, or her so paying more than their, his, or her rateable shares or share the excess which they, he, or she shall have paid towards the said indemnity over and above their, his, or her rateable shares or share, so that the several persons parties hereto of the first part, who shall execute these presents, may ultimately all contribute rateably to the said indemnity.

Covenants by the executors to bear the loss ratably in proportion to the amount of their shares.

AND EACH OF THEM THE SAID A. B., C. D., and E. F., doth hereby for himself, his heirs, executors, and administrators, covenant with each of the several persons parties hereto of the first part, his and her executors, administrators, and assigns, that each of them the said A. B., C. D., and E. F., shall and will bear his rateable share according to the amount of his respective share under the said will, of the loss arising from the cancelling of the said bond of £——, and of any loss which may arise by reason of deferring to sue upon the said bond for £——: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the covenants hereinbefore contained shall bind such of the several persons named as parties to these presents, and entering into the same covenants respectively as shall execute these presents, notwithstanding that any one or more of the other persons named as parties to these presents shall not execute these presents.

Proviso that persons executing the deed shall be bound notwithstanding others may not execute.

Qualified assent of the legatees who are

AND EACH OF THEM THE SAID several persons, parties hereto of the second part, doth hereby testify that

so far respectively as he has the means of judging, he believes that the cancelling the said bond for £—— and the abstaining for the present from suing upon the said bond for £——, is the most advantageous course for the estate of the said [*testator*], but nothing herein contained shall be construed to be an authority from the said several persons parties hereto of the second part to the said A. B., C. D., and E. F., to cancel the said bond for £——, or to abstain from suing upon the said bond for £——, or to prevent them the said several persons parties hereto of the second part, or any of them, upon further information or upon further advice from disputing the propriety of cancelling the said bond for £——, or of abstaining from suing upon the said bond for £——: PROVIDED ALWAYS and it is hereby agreed and declared between and by the said several persons parties to these presents of the first and third parts respectively, that the expenses of negotiating, preparing, and executing these presents, and also the expense (so far as the same shall not be paid by the said G. H.) of a bond to be executed by the said G. H. to the said A. B., C. D., and E. F., for further indemnifying them against all actions, suits, claims and demands on account of cancelling the said bond for £——, or abstaining from suing on the said bond for £——, shall be paid and contributed ratably out of the shares in the estate of the said [*testator*], of the said several persons parties hereto of the first and third parts respectively who shall execute these presents. IN WITNESS &c.

TO EXECUTORS FOR REMITTING AND GIVING TIME FOR PAYMENT OF DEBTS.

trustees for persons not competent to join.

Provision as to the payment of expenses ratably.

LXXII.

TO EXECUTORS BY A DEBTOR WHOSE DEBT IS REMITTED.

BOND *of* INDEMNITY *to* EXECUTORS *by a* DEBTOR *to whom One* DEBT *is* REMITTED, *and* TIME *given for* PAYMENT *of another* (*a*).

Bond.

KNOW ALL MEN, &c. [*Bond from G. H., the debtor to A. B., C. D., and E. F., the executors, supra, p.* 538].

Recitals;

WHEREAS &c. [*Recital of the will, &c., and of the reason for the composition entered into, ut supra, pp.* 547, 548]:

—of an indemnity by some only of the residuary legatees to the executors;

AND WHEREAS the major part of the residuary legatees in the said will named, by an indenture, bearing even date with the above-written bond or obligation, have authorized the cancelling of the said bond for £——, and the deferring to sue on the said bond for £——, and have covenanted to indemnify the said A. B., C. D., and E. F., and each of them, and each of their heirs, executors, and administrators, and their and each of their estates and effects, of, from, and against all actions, suits, losses, damages, costs, expenses, accounts, reckonings, claims, and demands whatsoever, for, upon account, or in respect of the said A. B., C. D., and E. F., or any of them cancelling the said bond for £——, or deferring to sue upon the said bond for £——, or for, upon account, or in respect of any act, deed, matter, or thing in anywise relating to the premises; but some of the residuary legatees in the said will named are incompetent to join in authorizing the cancelling of the said bond for £——, and the deferring to sue on the said bond for £——, or to join in giving the said indemnity:

—that the deferring to sue on the debt not

AND WHEREAS the suing upon the said bond for £—— is intended to be deferred so

(*a*) See supra, p. 547, n. (*a*).

long only as the executors or executor of the said [*testator*] for the time being shall, in the exercise of their or his discretion, think fit: AND WHEREAS, upon the treaty for the said arrangement, it was agreed, with the privity and consent of the said residuary legatees, parties to the said indenture of even date with the above-written bond or obligation, that the said G. H., [*debtor*], should execute and give to the said A. B., C. D., and E. F., his bond or obligation in the above-mentioned penalty, with such condition for making void the same as is hereunder written: NOW THE CONDITION of the above-written bond or obligation is such, that, if the said G. H., his heirs, executors, or administrators, or any of them, shall and do, well and sufficiently, save, defend, keep harmless, and indemnified the said A. B., C. D., and E. F., and each of them, their and each of their heirs, executors, and administrators, and their and each of their estates and effects, of, from, and against all actions, suits, losses, damages, costs, expenses, accounts, reckonings, claims, and demands whatsoever, for, upon account, or in respect of the said A. B., C. D., and E. F., or any of them, cancelling the said bond for £——, or deferring to sue upon the said bond for £——, or for, upon account, or in respect of any act, deed, matter, or thing in anywise relating to the premises, then and in such case the above-written bond to be void and of no effect, otherwise to remain in full force and virtue.

TO EXECUTORS BY A DEBTOR WHOSE DEBT IS REMITTED.

cancelled, is at the discretion of the executors;

—of the agreement for the indemnity.

Condition of bond.

MISCELLANEOUS INSTRUMENTS.

LXXIII.

CONVEYANCE IN TRUST FOR SALE OF THE REAL ESTATE OF A PERSON GOING ABROAD.

CONVEYANCE *of* FEE-SIMPLE *and* LIFEHOLD *Estates* — ASSIGNMENT *of* LEASEHOLDS *for* YEARS — *and Covenant to surrender* COPYHOLDS, *by a Person going abroad, to Trustees* IN TRUST *for* SALE, *with* POWER *until Sale to let, manage, and mortgage the Estates, obtain Renewals of Leases, and other Powers* (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*grantor*], of the one part; and C. D., of &c., and E. F., of &c., [*grantees—trustees*], of the other part: WHEREAS the said A. B. is seised or entitled for an estate of inheritance in fee-simple of or to divers freehold messuages, lands, tithes, tenements, rents, and other hereditaments in England; and is possessed or entitled of or to divers messuages, lands, tithes, rents, tenements, and other hereditaments in England, held by him under a lease or leases, or otherwise for a life or lives, or for a term or terms of years, determinable on a life or lives, or absolute; and is seised or entitled for an estate of inheritance to him and his heirs, or for some other estate or estates, of or to divers copyhold messuages,

Recital of the grantor's being entitled to freehold, copyhold, and leasehold estates;

(*a*) A conveyance in trust for sale is better than a power of attorney to sell, because a purchaser cannot be compelled to take a conveyance by attorney; (2 Sugd. Vend. & Purch. 437, 10th edit.); and because a power of attorney is revocable by the death of the principal. Id. 438, and ante, Vol. 3, p. 384, n. *f*. As to the effect on a power of attorney of the lunacy of the principal, see *Ex parte Bradbury*, 4 Dea. 202.

lands, tenements, and other hereditaments in England: AND WHEREAS the said A. B. is about to leave Great Britain and reside in foreign parts, and is desirous of converting his freehold, leasehold, and copyhold estates in England into money: NOW THIS INDENTURE WITNESSETH, that for effectuating the said desire, and in consideration of the premises, He the said A. B. doth by these presents, (made in pursuance of an act, &c., *see supra, p.* 266), grant, release, and confirm unto the said C. D. and E. F., their heirs and assigns, ALL and singular the messuages, lands, tithes, tenements, rents, and other hereditaments, situate, lying, and being, arising, growing, renewing, or issuing, in the counties of —— and —— respectively, or elsewhere in England, whereof or whereto he the said A. B. is seised or entitled in fee-simple at law or in equity, beneficially and not as mortgagee, and either in possession, or in remainder, or reversion, expectant upon any estate or estates therein; AND ALSO all the messuages, lands, tithes, tenements, rents, and other hereditaments whatsoever and wheresoever, situate, lying, being, arising, growing, renewing, or issuing in the said counties of —— and —— respectively, or elsewhere in England, of or to which the said A. B. is absolutely seised or entitled at law or in equity for the lives or life of any person or persons under any lease or leases, for lives, or for a life, or otherwise, beneficially and not as mortgagee, and either in possession, or in remainder, or reversion, expectant upon any estate or estates therein, TOGETHER WITH, &c., [*general words*], TO HAVE AND TO HOLD the said fee-simple messuages, lands, tithes, tenements, rents, and other hereditaments hereby granted and released, or expressed and intended so to be, and every of them, and every part or parcel thereof, with their rights, members, easements, and appurtenances, (but subject to the several leases and particular estates and incumbrances now subsisting in or affecting the same respectively), unto the said C. D. and E. F., their heirs and assigns, for ever, TO THE USE of the said C. D. and E. F., their heirs and assigns, for ever; AND TO HAVE AND TO HOLD the said messuages, lands, tithes, tenements,

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—of his being about to leave England, and being desirous to convert them into money.

Witnesseth conveyance to the trustees of all the grantor's freehold estates.

Habendum, as to the fee-simple hereditaments absolutely;

—and as to the lifehold hereditaments, for

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rents, and other hereditaments held under any lease or leases for a life or lives, and hereby granted and released, or expressed and intended so to be, and every of them, and every part and parcel thereof, with their rights, members, easements, and appurtenances, (but subject to the several leases and incumbrances now subsisting in or affecting the same respectively), unto the said C. D. and E. F., their heirs and assigns, to the use of the said C. D. and E. F., their heirs and assigns, during the life or lives of the persons or person for whose life or lives the several last-mentioned premises are respectively holden as aforesaid; NEVERTHELESS, as to all the said hereditaments and premises hereinbefore granted and released, or expressed and intended so to be, Upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the said desire, and in consideration of the premises, He the said A. B. doth by these presents assign unto the said C. D. and E. F., their executors, administrators, and assigns, ALL the messuages, lands, tithes, tenements, rents, and other hereditaments, situate, lying, and being, arising, growing, renewing, or issuing in the said counties of —— and —— respectively, or elsewhere in England, of or to which the said A. B. is absolutely possessed or entitled at law or in equity for any term or terms of years, or for any term or terms of years determinable on a life or lives, beneficially and not as mortgagee, and either in possession, or in remainder, or reversion, expectant upon any estate or estates therein, with their respective rights, easements, appurtenances, AND ALL THE ESTATE &c., TO HAVE AND TO HOLD the said messuages, lands, tithes, tenements, hereditaments, rents, and all and singular other the premises hereinbefore assigned or expressed and intended so to be, (but subject to the several leases and particular estates and incumbrances now subsisting in or affecting the same respectively), unto the said C. D. and E. F., their executors, administrators, and assigns, for all the residue

the lives for which they are holden;

—upon the trusts subsequently declared.

Witnesseth further, assignment to trustees of the leaseholds for years.

Habendum upon the trusts subsequently declared.

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now to come of the term or terms for years for which the same premises respectively are now holden: NEVERTHELESS, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of or concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, for the considerations aforesaid, the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and E. F., and their heirs, that He the said A. B., or his heirs, shall and will at or before the next or some subsequent court, to be holden in and for the respective manors of which the same are respectively holden, at the cost and charges of the said A. B., his heirs, executors, or administrators, well and effectually surrender, or cause and procure to be surrendered, into the hands of the lord or ladies of the same manors respectively according to the custom thereof respectively, ALL and singular the copyhold messuages, tenements, and hereditaments, situate, lying, and being in the counties of —— and —— respectively, or elsewhere in England, of or to which the said A. B. is seised or entitled for any estate at law or in equity, beneficially and not as mortgagee, and either in possession, or in remainder or reversion, expectant upon any estate or estates therein, [*general words*], TO THE USE of the said C. D. and E. F., their heirs and assigns, according to the customs of the manors whereof the same premises are respectively holden and to be holden, by and under the suits and services, rents, fines, and heriots therefore respectively due, and of right accustomed, (but subject to the several leases and particular estates and incumbrances now subsisting in or affecting the same premises respectively); NEVERTHELESS, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained of and concerning the same: AND IT IS HEREBY AGREED AND DECLARED between and by the said parties to these presents, that the said C. D. and E. F., their heirs, executors, administrators, and assigns, respec-

Witnesseth further, covenant to surrender copyholds;

—to the use of the trustees;

—upon the trusts to be subsequently declared.

Declaration of trust.

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tively, shall stand and be seised and possessed respectively of, and interested in, the said messuages, lands, tithes, tenements, rents, and other hereditaments and premises hereinbefore granted and released, and assigned respectively, or expressed and intended so to be, and of and in the said messuages, lands, hereditaments and premises hereinbefore covenanted to be surrendered, Upon and for the trusts, intents, and purposes, and with, under, and subject to the several powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same, (that is to say), UPON TRUST that they the said C. D. and E. F., and the survivor of them, and the heirs, executors, or administrators respectively of such survivor, do and shall, at their or his absolute discretion, and without any further consent or direction of or by the said A. B., his heirs, executors, or administrators, or of or by any other person or persons, when and so soon as they or he shall think proper, absolutely sell and dispose of the said messuages, lands, tithes, tenements, rents, and other hereditaments and premises hereinbefore granted and released, and assigned respectively, or expressed and intended so to be, and of and in the said messuages, lands, and hereditaments hereinbefore covenanted to be surrendered, or, in case they or he shall think proper, join and concur with any mortgagee or mortgagees, or other incumbrancer or incumbrancers of the same premises or any of them, or any part or parts thereof, in selling and disposing of the same premises, or any part or parts thereof, whether such mortgagee or mortgagees, or other incumbrancer or incumbrancers, shall have a power of sale or powers of sale, or shall be a trustee or trustees for sale, or not, with full power and authority to make, or join and concur in making such sale or sales as aforesaid, either at one time or at several times, and either entirely and altogether, or in parcels (*b*), and either by public auction or private contract (*c*); and as to such of the same premises as may be subject to any mortgage, charge, or incumbrance, either subject thereto,

Trust for sale —either alone or in concurrence with incumbrancers, and with various powers;

(*b*) See ante, Vol. 3, p. 290, n. *a*. (*c*) Id. n. *b*.

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or, so far as circumstances will admit, discharged therefrom, for such price or prices, or sum or sums of money, as to the said trustees or trustee for the time being, or such mortgagee or mortgagees, incumbrancer or incumbrancers as aforesaid, shall seem proper; And also with full power and authority to buy in, or join and concur in the buying in of the said freehold, leasehold, and copyhold hereditaments and premises, or any of them, or any part or parts thereof respectively, at any sale or sales by auction; and to rescind, alter, or vary, or join and concur in rescinding, altering, or varying any agreement or agreements which may be entered into for the sale thereof, or any of them, or any part or parts thereof respectively, whether upon a sale by public auction or private contract; and to resell, or join and concur in the resale of the premises which shall be so bought in, or as to which the contract or contracts for sale shall be so rescinded, without being answerable for any loss which may be occasioned thereby (*d*); And also with full power and authority to make any such sale or sales as aforesaid, or join and concur in any such sale or sales as aforesaid being made, under any special conditions or condition of sale in relation to any incumbrance or incumbrances which may affect the same premises which shall be so sold, or any part thereof, or as to the title to be required by the purchaser or purchasers, or the evidence to be produced in support of the same, or as to proving the tenure of the hereditaments sold, or distinguishing the tenures of different parts thereof, or as to the person or persons by whom all or any of the expenses attending or consequent upon such sale or sales shall be borne or otherwise, and in particular to make any such stipulations or conditions in any particulars of sale comprising more than one lot, although such stipulations or conditions, or some of them, may not be required for one or more of such lots (*e*); And to make, give, or execute, or join and concur in making, giving, or executing to any purchaser or purchasers any indemnity upon any other part or parts of the

(*d*) See ante, Vol. 3, p. 291, n. *d*. (*e*) Id. p. 95, n. *b*.

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said freehold and leasehold hereditaments and premises, against any incumbrance or incumbrances which may affect the premises so sold, or any part or parts thereof, and do and shall, for the purposes aforesaid, enter into, make, and execute, or cause and procure to be entered into, made, and executed, or join and concur in the entering into, making, and executing all such contracts, agreements, conveyances, assignments, acts, deeds, matters, or things, as they or he shall deem expedient, with full power and authority to adopt, either altogether or in part, any contracts or agreements which may have been made or entered into by or on behalf of any such mortgagee or incumbrancer as aforesaid, or by or on behalf of the said A. B., and any such mortgagee or incumbrancer as aforesaid: AND UPON FURTHER TRUST, that, in the mean time and until the said several hereditaments and premises shall be sold and disposed of as aforesaid, the said C. D. and E. F., and the survivor of them, and the heirs, executors, and administrators respectively of such survivor, do and shall from time to time order and direct the management, cultivation, keeping up, and improvement of the said hereditaments and premises, and every of them, and every part thereof, or let and demise the same, or any of them, for such term or terms, and in all respects in such manner as they or he shall think proper, (but as to the said copyhold hereditaments and premises, according to the customs of the manors whereof the same are respectively holden), with full power and authority to renew any subsisting leases of any part of the same premises upon such terms as they or he shall think proper; And also with full power to cause to be enfranchised all or any of the said copyhold hereditaments upon such terms as they or he shall think proper; and do and shall collect, receive, and recover of and from the present or any future tenant or tenants thereof respectively, or any other person or persons liable to pay or account for the same, all and every the annual rents and other issues and profits, with full power and authority to make all such allowances and deductions to tenants as they or he shall think proper: AND DO AND SHALL, out of such rents, issues, and profits, pay and dis-

—and until sale, to manage and let and receive rents;

—and thereout pay out-goings.

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charge the costs, charges, and expenses attending the collection or receipt and recovery thereof; And also all such taxes and other outgoings chargeable upon or payable in respect of the same hereditaments and premises as are or ought to be borne by the landlord thereof; and all rent-charges and other annual sums of money charged or secured upon the said premises or any of them, and the interest of any sum or sums of money charged or secured upon the same premises or any of them (*f*). PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said C. D. and E. F., and the survivor of them, and the heirs, executors, or administrators respectively of such survivor, at any time or times before the said hereditaments and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, or any of the said hereditaments and premises hereinbefore covenanted to be surrendered shall be sold in pursuance of the trusts of these presents, to take up at interest any sum or sums of money by way of mortgage of the same premises or any of them, or any part or parts thereof respectively, either in fee or for any term or terms of years, and for such purpose to make, do, and execute all such instruments, assurances, acts, matters, and things as they or he shall think expedient. PROVIDED ALSO, and it is hereby further agreed and declared, that in case, when or before the said premises hereinbefore conveyed for a life or lives only, or for a term or terms of years determinable upon a life or lives, or for a term or terms of years absolute, shall be so sold as aforesaid, the leases of the same premises shall become renewable according to the usual course of renewal, it shall be lawful for the said C. D. and E. F., and the survivor of them, and the heirs, executors, and administrators respectively of such survivor, from time to time to effect or procure a renewal or renewals of the lease or leases of the premises, the lease or leases of which shall become renew-

Power to raise money upon mortgage.

Power to obtain renewals of leases in the ordinary course of renewal.

(*f*) See other trusts of this nature, ante, Vol. 3, pp. 291, 292. Vol. 4, pp. 630—632, p. 637, and pp. 643 et seq. See too, supra, Precedent 49, pp. 433 et seq.

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able at and under the rents and covenants reserved and contained in the subsisting lease or leases, or as near thereto as conveniently may be; And for the purpose of such renewal or renewals, to levy and raise by and out of the yearly rents, issues, and profits of any of the said hereditaments and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, or covenanted to be surrendered, or by or out of any sum or sums of money to arise by or from any such sale or sales, or mortgage or mortgages as aforesaid, or by such other ways or means as they or he shall think proper, such sum or sums of money as shall be sufficient to pay the fines, fees, and expenses of renewing the said last-mentioned lease or leases respectively; And for the same purpose it shall be lawful for the said last-mentioned trustees or trustee from time to time to surrender, or cause and procure to be surrendered, the then subsisting lease or leases of the said premises holden as aforesaid, and all their and his estate and interest therein respectively, and to do all such other acts as they or he shall think expedient for obtaining such renewal (*g*). AND IT IS HEREBY AGREED AND DECLARED between and by the parties hereto, that in case any of the said hereditaments and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, or any of the said hereditaments and premises hereinbefore covenanted to be surrendered, shall at any time or times hereafter be mortgaged under the power hereinbefore in that behalf contained, Then and thenceforth the said C. D. and E. F., and the survivor of them, and the heirs, executors, or administrators respectively of such survivor shall apply a competent part of the rents, issues, and profits of the said hereditaments and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, or of the said hereditaments and premises hereinbefore covenanted to be surrendered, or of the unsold part thereof of the same

In case of mortgages being made, a competent part of the income to be applied in keeping down the interest.

(*g*) See the trusts for renewal, ante, Vol. 4, pp. 347, 348, and supra, pp. 433, 434.

premises respectively for the time being, in payment and discharge of the interest from time to time to accrue due upon the principal debt or debts for which the said premises shall have been so mortgaged. AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties to these presents, that it shall be lawful for the said C. D. and E. F., and the survivor of them, and the heirs, executors, or administrators respectively of such survivor, by and with or out of the rents, issues, and profits of the said hereditaments and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, and of the said hereditaments and premises hereinbefore covenanted to be surrendered, or by and with or out of the monies to arise and be produced by any sale or sales, mortgage or mortgages to be hereafter made under the authority of these presents, of any of the said hereditaments and premises, or by both such ways or means, or by any other ways or means, to pay off and discharge and satisfy respectively, or agree to and sanction the payment, discharge, and satisfying respectively thereout of any mortgage or mortgages, charges or incumbrances now affecting or which shall hereafter affect the same premises or any part or parts thereof. AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties to these presents, that it shall be lawful for the said C. D. and E. F., and the survivor of them, and the heirs, executors, or administrators respectively of such survivor, with and out of any monies which shall come to their hands by virtue of these presents, to purchase any annuity or annuities, rent-charge or rent-charges, or annual sum or annual sums in anywise issuing out of or charged or chargeable upon the said freehold and leasehold hereditaments and premises hereinbefore granted and released and assigned respectively, or expressed and intended so to be, or upon the said hereditaments and premises hereinbefore covenanted to be surrendered, or any of them, or any part thereof, to the intent that such annuity or annuities, rent-charge or rent-charges, or annual sum or annual sums, may cease to be a charge upon or to affect the premises out of which the same are or is payable, or upon

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Power out of monies received to discharge incumbrances;

—and annuities.

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which the same are or is so charged. AND IT IS HEREBY AGREED AND DECLARED, between and by the parties to these presents, that the receipt or receipts in writing of the said C. D. and E. F., or the survivor of them, or the heirs, executors, or administrators respectively of such survivor, for any purchase-money, rents, or profits to arise as aforesaid, or any monies to be raised by mortgage as aforesaid, or any money which shall be paid to them or him by any mortgagee or mortgagees who may have been in receipt of the rents, issues, and profits of the hereditaments in mortgage to him or them, or any part thereof, or who shall have sold the hereditaments in mortgage to him or them, or any part thereof, or for any other sum or sums of money payable under or by virtue of these presents, or in the execution of the trusts or powers hereof, shall be a sufficient discharge or sufficient discharges for the same, or so much thereof respectively as in such receipt or receipts respectively shall be expressed or acknowledged to be received; And that the purchaser or purchasers, tenant or tenants, mortgagee or mortgagees, or other person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication, or be in anywise concerned to see to the application of the monies therein mentioned and acknowledged to be received, nor shall any mortgagee or mortgagees or others be bound to inquire into the expediency of or necessity for raising the money to be advanced and lent by him or them respectively, nor shall any purchaser or purchasers be in anywise affected or prejudiced by reason of the sale to him or them having been made under special stipulations or conditions which the state of the title to the hereditaments purchased by them or him may not have required (*h*). AND IT IS HEREBY AGREED AND DECLARED, between and by the parties to these presents, that the said C. D. and E. F., and the survivor of them, and the heirs, executors, or administrators respectively of

Power to the trustees to give receipts.

Ultimate trust for the grantor of all money received.

(*h*) See ante, Vol. 3, p. 95, n. *a*.

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such survivor, shall stand and be possessed of and interested in the sum or sums of money to arise or be produced by any sale or sales, or mortgage or mortgages which shall be made in pursuance of these presents, and of and in the clear or net rents, issues, and profits of the said freehold and leasehold hereditaments hereinbefore granted and released and assigned respectively, or expressed and intended so to be, and of the said hereditaments and premises hereinbefore covenanted to be surrendered, until the same respectively shall be sold, and of and in all other monies which shall be raised by or come to them or him under or by virtue of these presents, (subject and without prejudice to the payment thereout of all sums of money which, under or by virtue of these presents, shall be paid thereout by the said trustees or trustee), In trust for the said A. B., his executors, administrators, or assigns, as personal estate, it being the intention of the said A. B., that these presents shall operate as an absolute conversion into money of all the said hereditaments and premises to all intents and purposes whatsoever: PROVIDED ALWAYS and it is hereby further agreed and declared, that it shall be lawful for the said trustees or trustee for the time being from time to time to lay out or invest any monies which may have come to their or his hands in or about the execution of the trusts of these presents, and which shall not be immediately wanted for any of the purposes aforesaid, in the purchase of British Government securities, or in any of the Parliamentary stocks or public funds of Great Britain, and to keep the same so invested until the same shall be wanted for some of the purposes aforesaid; And the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and E. F., their heirs, executors, administrators, and assigns respectively in manner following; (that is to say), [*Covenants (notwithstanding the acts of A. B., &c., or his ancestors)—for seisin of the freeholds and copyholds (see ante, Vol. 3, p. 326)—that the leases are valid, and the rents and covenants duly paid and performed (see ante, Vol. 3, p. 336)—for right to convey the freeholds, assign the leaseholds, and surrender the copy-*

Power of temporary investment.

Covenants for title.

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holds (*see ante, Vol. 3, pp. 327 and 336*)—*for quiet enjoyment, freedom from incumbrances, and for further assurance,* (*see ante, Vol. 3, pp. 327, 337*]: PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the said parties to these presents, that it shall be lawful for the

Power of revocation.

said A. B. at any time or times during his life, by any deed or deeds, or instrument or instruments in writing, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, to alter, vary, revoke, determine, and make void all and every, or any part of the trusts, powers, provisoes, agreements, and declarations hereinbefore declared, expressed, and contained, and by the same or any other deed or deeds, or instrument or instruments in writing, to declare any new or other trust or trusts of the hereditaments, the trusts, powers, provisoes, agreements, and declarations whereof or as to which shall be so altered, varied, or revoked, determined or made void as aforesaid, as to him the said A. B. shall seem meet: PROVIDED ALWAYS, and it

No person dealing with the trustees to be affected by the exercise of such power, unless a notice thereof has been indorsed on this deed.

is hereby agreed and declared, that no purchaser or purchasers, mortgagee or mortgagees, or other person or persons who shall enter into any covenant or covenants with, or pay any money unto, or otherwise deal with the said trustees or trustee for the time being, shall be in anywise affected by any exercise of the power lastly hereinbefore contained, unless previously to the time of his, her, or their so contracting, paying, or dealing, a memorandum shall have been indorsed on these presents, stating that such power has been exercised, and the extent to which and in what respect the same has been so exercised. [*Power* "for the said A. B., his executors or administrators," *to appoint new trustees, supra, p.* 511—*clauses for the indemnity of trustees, and the payment of their expenses, supra, p.* 513]. IN WITNESS &c.

Trustee clauses.

LXXIV.

CONVEYANCE *to the* GOVERNORS *of* QUEEN ANNE'S BOUNTY *of a Piece of Land for the Site of a* CURATE'S HOUSE (*a*).

CONVEYANCE TO THE GOVERNORS OF QUEEN ANNE'S BOUNTY.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*grantor*], of the one part; and The Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy, of the other part: WHEREAS the said A. B. being seised to him and his heirs of an estate in fee-simple in possession of and in the plot, piece, or parcel of land hereinafter mentioned and intended to be hereby conveyed, with the appurtenances, and which is conveniently situated for the site of a house to be built for the residence of the curate of the curacy of ——, in the county of ——, and in the diocese of ——, is desirous to give and grant to, and

Parties.

Recital of the seisin of the grantor, and of his desire to convey to the governors for the augmentation of the curacy.

(*a*) The corporation of the Governors of Queen Anne's Bounty was established for the augmentation of the maintenance of the poor clergy, in pursuance of the statute 2 & 3 Anne, c. 11; and the 4th section of that statute enables all persons, by deed inrolled as a bargain and sale, or by will, to convey or give lands to the corporation, for the augmentation of the maintenance of the minister of any church or chapel, according to the will of the benefactor, or, in the absence of any special direction, as the Crown shall appoint. This statute was amended by the statute 1 Geo. 1, c. 10, which constitutes the augmented churches, perpetual benefices, and the ministers, bodies corporate, capable of taking in succession; and by the statute 36 Geo. 3, c. 83, which enacts, that augmented churches shall be deemed in law benefices presentative. The statute 43 Geo. 3, c. 107, provides, that the act of Anne shall remain in full force, notwithstanding the Mortmain Act, 9 Geo. 2, c. 36, and empowers the governor of the charity to purchase, where occasion requires, suitable parsonage houses for the residence of ministers. The most recent statutes respecting Queen Anne's Bounty, are the 1 Vict. c. 20, and the 2 & 3 Vict. c. 49. See further, Rogers's Ecclesiastical Law, Art. FIRST FRUITS AND TENTHS, pp. 446 et seq.

Queen Anne's Bounty.

CONVEYANCE TO THE GOVERNORS OF QUEEN ANNE'S BOUNTY.

vest in the said governors and their successors the said plot, piece, or parcel of land, with the appurtenances, for and towards the augmentation of the maintenance of the curate of the said curacy. NOW THIS INDENTURE WITNESSETH, that, for effectuating the said desire, and in consideration of the premises, He, the said A. B., doth by these presents grant, bargain, sell, release, and confirm unto the said governors, their successors and assigns, ALL THAT &c. [*Parcels—General words*], TO HAVE AND TO HOLD the said plot, piece, or parcel of land and hereditaments, and all and singular the premises hereinbefore granted and released, or expressed and intended so to be, unto, and to, and for the only proper use and behoof of the said governors, their successors and assigns, To be by them the said governors and their successors applied for and towards the perpetual augmentation of the maintenance of the curate of the curacy of —— aforesaid according to the rules and orders made and established by letters patent under the great seal of Great Britain, pursuant to the charter of incorporation of the said governors, and the several acts of Parliament in that case made and provided. [*Covenants for title by A. B. with the governors, their successors, and assigns for seisin—for right to convey—for quiet enjoyment, and receipt of the rents,* "for the perpetual augmentation of the maintenance of the curate of the curacy of —— aforesaid," *and for further assurance* "unto and to the use of the said governors, their successors, and assigns for ever, for the purposes aforesaid." *See ante, Vol.* 3. *pp.* 201—204]. IN WITNESS &c. (*b*).

Witnesseth conveyance.

Habendum to the governors for the augmentation of the curacy.

Covenants for the title.

(*b*) This deed must be inrolled as in the case of a bargain and sale; see statute 2 & 3 Anne, c. 11, sect. 4.

LXXV.

CONVEYANCE AND ENDOWMENT OF A CHAPEL OF EASE.

CONVEYANCE *to* TRUSTEES, *and* DECLARATION *of* TRUSTS *of a* CHAPEL *of* EASE *which had been built by* SEVERAL SUBSCRIBERS — DECLARATION *of* TRUST *of a Sum of* STOCK *for the Benefit of the Chapel*—RELINQUISHMENT *by the* RECTOR *of the* PARISH *of his* RIGHT *of* NOMINATION *of the Minister of the Chapel* (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., and C. D., of &c. [*persons in whom the chapel is vested*], of the first part; The Reverend E. F., clerk,

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New churches; —statutes relating to;

(*a*) The deed from which this Precedent was taken, was prepared about the year 1830; but it does not appear that the numerous subsequent statutes relating to the building, endowment, and patronage of new churches and chapels of ease, materially affect its provisions. A succinct view of these statutes, (of which the most important are the 1 & 2 Will. 4, c. 38, and the 1 & 2 Vict. c. 107), will be found in Rogers's Ecclesiastical Law, tit. CHURCH BUILDING, pp. 194—214. See too, the same work, tit. CHAPEL.

—patronage of.

One of the most important points to which these statutes relate, is the right of nomination of the ministers of new churches. Primâ facie the incumbent of the parish church has the right to nominate the minister, unless a special right be established by prescription, or special agreement; Ambl. 528; 2 Eden, 360; 1 P. Wms. 774; *Farnworth* v. *The Bishop of Chester*, 4 B. & C. 568; 1 Hagg. 168; 2 Hagg. 47; 3 Hagg. 509; and no person has a right to erect a new public chapel, whether as a chapel or otherwise, without the concurrent consent of the incumbent, patron, and ordinary of the mother church. *Bliss* v. *Woods*, 3 Hagg. 509. But, by the consent of the incumbent, patron, and ordinary of the mother church, as in the text, or, in certain cases, by complying with the provisions of the statutes 1 & 2 Will. 4, c. 38, s. 2, and 1 & 2 Vict. c. 107, s. 3, the person or persons building and endowing a new church, in manner provided by those statutes, may, with the sanction of the bishop, have the patronage of such church vested in themselves, or in trustees of their nomination, but so that such patronage shall not vest in more than

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rector of the parish of ——, in the county of ——, of the second part; G. H., of &c., patron of the said rectory of the parish church of ——, of the third part; the Right Reverend Father in God ——, Lord Bishop of ——, ordinary of the said rectory, of the fourth part; the said Lord Bishop of ——, A. B., C. D., E. F., G. H., I. K., of &c., and L. M., of &c., [*intended trustees of the chapel*], of the fifth part; the said E. F., G. H., I. K., and L. M., [*trustees of the stock intended to form the endowment fund*], of the sixth part; the several persons named in the schedule to these presents, and whose hands and seals are hereunto subscribed and affixed, of the seventh part; and N. O., of &c., of the eighth part: WHEREAS, by indentures of lease, and appointment and release, bearing date respectively the —— and —— days of —— now last past, and made or expressed to be made between —— of the one part, and the said A. B. and C. D. of the other part, ALL THAT &c., [*description of ground from the deed*], And also all that erection or building which was then in part erected and built by the said A. B. and C. D. on part of the ground thereby conveyed and intended to be consecrated by the Lord Bishop of the diocese, as a chapel for the performance of divine service, according to the rights and ceremonies of the Church of England, with the appurtenances, were conveyed and assured to the use of the said A. B. and C. D., their heirs and assigns, for ever: AND WHEREAS, since the date and execution of the said recited indentures, the said chapel or building hath been completed on part of the said piece or parcel of ground, and the remainder thereof hath been inclosed as a chapel yard, and the said chapel or building is intended to be consecrated by the Lord Bishop of the diocese, and when so consecrated is intended to be called —— chapel, and to be used for ever as an additional chapel of ease to the said parish church of ——, under the rules and regulations, and subject to

Recital of the conveyance of the site of the chapel to two persons;

—that the chapel has been subsequently completed, and is intended to be consecrated;

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five persons at once, except by operation of law. But, in order to take advantage of these statutes, the provisions must be strictly complied with. *Brown* v. *Williams*, 1 Curteis, 53.

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the provisions hereinafter expressed and contained: AND WHEREAS the purchase-money of £—— paid for the said ground by the said A. B. and C. D. as in the said indenture of release is mentioned, and the money expended in the building the said chapel, and inclosing the said chapel yard, (except the sum of £—— which was advanced by the said N. O. by way of loan), was raised by the voluntary subscriptions of the several persons parties hereto of the seventh part, and the further sum of £—— also raised by the voluntary contributions of the said several persons parties hereto of the seventh part, hath been invested by the said C. D. in the purchase of the sum of £——, £3 per cent. Consolidated Bank Annuities, in the names of the said E. F., G. H., I. K., and L. M., To the intent that the same may be held upon the trusts hereinafter declared of the same: AND WHEREAS the said E. F., as such rector as aforesaid, hath with the consent of the said G. H. and ——, Lord Bishop of ——, as such patron and ordinary as aforesaid, agreed, that, in consideration of the yearly sum of £1, to be made payable to the rector for the time being of the said parish church as hereinafter is mentioned, the appointment of the minister of the said chapel for ever hereafter shall be vested in the trustees, to the use of whom the said chapel is intended to be conveyed by these presents, and their successors to be appointed as hereinafter is mentioned (*b*): AND WHEREAS the said several persons, parties to these presents, of the fifth part, have been appointed by the said contributors to be the present trustees of the said chapel, and in consideration of the premises, it hath been agreed that the piece or parcel of ground, and the said chapel or building thereon erected, with the appurtenances, shall be conveyed by the said A. B. and C. D. in such manner that the same may become vested in the said several persons, parties hereto, of the fifth part, their heirs and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared and contained of or concerning the same.

—that the money expended in purchasing the site, and building the chapel, (except £——, borrowed), was raised by the contributions of the parties of the seventh part; and that a further sum, similarly raised, has been laid out in the purchase of a sum of stock in the names of trustees;

—that the rector of the parish has agreed to relinquish his right of nomination;

—that the chapel is to be conveyed to the parties of the fifth part as trustees.

(*b*) See supra, p. 569, n. *a*.

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Witnesseth conveyance of the chapel to the trustees;

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, and for promoting the Christian religion as professed by the members of the Established Church of England, they the said A. B. and C. D., with the consent of the several other persons parties to these presents, do and each of them doth by this present deed, indented, sealed, and delivered by them in the presence of two credible witnesses attesting the same, (and which deed indented is made in pursuance of an act &c., *supra*, *p.* 266, and is intended to be inrolled in the High Court of Chancery), release unto the said E. F. and his heirs the said piece or parcel of ground, chapel or building, hereditaments and premises so as aforesaid conveyed or expressed to be conveyed to them the said A. B. and C. D., their heirs and assigns, as hereinbefore is mentioned. [*General words*]. To HAVE AND TO HOLD the said piece or parcel of ground, chapel, or building, and all and singular other the premises hereinbefore released or expressed and intended so to be, unto the said E. F., and his heirs, To the use of the said —— Lord Bishop of ——, A. B., C. D., E. F., G. H., I. K., and L. M., their heirs and assigns for ever, nevertheless, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter declared, expressed, and contained of and concerning the same, (that is to say), UPON TRUST, that they the said several persons, parties hereto of the fifth part, and the survivors of them, do and shall for ever, after the said chapel or building shall have been consecrated by the Lord Bishop of the said diocese of ——, cause and procure to be celebrated and performed in the said chapel at the least two full services, according to the rites of the Church of England as established by law, on each and every Sunday throughout the year, and at the least one full service on every Christmas-day and Good Friday, and such other divine services on such other days or times, and all such funeral and other rites, services, and ceremonies as now are, or shall or may hereafter be used and accustomed to

Habendum to the trustees.

Upon trust to procure divine service to be duly performed in the chapel;

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be celebrated and performed in and by the said Established Church: AND for effectuating the purposes aforesaid, do and shall immediately after such consecration as aforesaid, elect and choose a fit and proper person, being a clergyman of the Established Church of England in priest's orders, to act and officiate as the minister of the said chapel; And on the death, resignation, or lawful deprivation of such minister, and of every successor to the said office of minister, do and shall from time to time, without delay, elect and choose in his place or stead some other fit and proper person of godly life and conversation, and being in priest's orders as aforesaid, to act and officiate as the minister of the said chapel; AND DO AND SHALL, at the opening of the said chapel, cause and procure —— commodious sittings to be provided and appropriated in the said chapel for the use of the adult poor of the said parish of ——, and —— sittings for the use of the poor children of the same parish; and do and shall at all times for ever thereafter cause the same number of sittings to be set apart and kept open as free sittings for the use and benefit of the said poor during the hours in which divine service shall be performed in the said chapel: AND DO AND SHALL uphold and maintain in good repair and condition, and from time to time as often as occasion shall require, cleanse and beautify the said chapel and premises, and insure the same chapel from loss or damage by fire, and do all such other acts in and about the premises as shall by them the said trustees or trustee for the time being be deemed necessary or expedient for maintaining and keeping the said chapel and premises in a fit and proper state for the perpetual performance of divine service therein at the times and in the manner hereinbefore directed: AND DO AND SHALL, at the request of the chapelwardens for the time being of the said chapel, enter into, make, and execute all such leases and other acts, deeds, matters, or things whatsoever as shall be deemed necessary or advisable for carrying into effect any contract or contracts which shall at any time or times have been entered into by the said chapelwardens, under the provision in that behalf hereinafter contained, for granting

—and from time to time to appoint an officiating minister;

—and set apart certain free sittings;

—and keep the chapel in good order;

—and effectuate contracts to be entered into by the chapelwardens for leases of sittings;

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a lease or leases of any of the pews or sittings in the said chapel, (except the aforesaid free sittings); and do and shall permit and suffer the rents, which shall be reserved upon such leases respectively, to be received by the chapel-wardens for the time being of the said chapel, to be by them applied upon the trusts and for the purposes hereinafter declared concerning the same: AND DO AND SHALL from time to time, and at all times after the said chapel shall have been consecrated as aforesaid, absolutely sell and dispose of, or grant the exclusive use of any vault, or any spot, piece, or parcel of ground to be constructed into and used as a vault or private place of interment, lying and being in or under the said chapel, unto any person or persons who shall from time to time be desirous to become the purchaser or purchasers thereof, for such price or prices, or sum or sums of money, not being less than the price which at the time of any such sale would have been payable to the rector for the time being of the said parish church of ——, upon the absolute sale or grant, or exclusive use of any vault or spot, or piece or parcel of ground to be constructed into and used as a vault, of similar size and dimensions in the parochial cemetery for the time being of the said parish church of ——, as to them the said trustees shall seem reasonable: AND DO AND SHALL, for promoting and facilitating any such sale, and also for the purpose of ensuring unto any such purchaser or purchasers as aforesaid, his, her, or their heirs and assigns for ever, the absolute and sole use of any such vault or private place of interment as aforesaid, enter into, make, and execute all such contracts, covenants, and agreements, assignments, assurances, acts, deeds, matters, and things, as to them the said trustees or trustee for the time being shall seem meet: AND IT IS HEREBY DECLARED AND AGREED, that the several persons parties hereto of the fifth part, and the survivors of them, shall stand and be possessed of and interested in the monies which shall arise or be produced from such sales from time to time as aforesaid, upon trust in the first place, by and out of the monies to arise by such sales, to pay unto the rector for the time being of the said

—and sell and dispose of vaults;

—and execute all necessary assurances for such purpose.

Trusts of the money to be received from the sale or disposition of vaults.

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parish church of —— such a sum of money as at the time of each such sale he would have been entitled to receive upon the sale or grant of the exclusive use of a vault, or spot, or piece or parcel of ground, to be constructed into and used as a vault or private place of interment in the parochial cemetery for the time being of the said parish of ——, of similar size and dimensions to the vault, or spot, or piece or parcel of ground which shall be so sold for such purpose as hereinbefore is mentioned, such price or value, if any dispute shall arise respecting the amount thereof, to be settled by a reference to two indifferent persons in the usual course of arbitration, one of the said persons to be named by the rector for the time being of the said parish church of ——, and the other by the said trustees or trustee for the time being; And upon trust to pay the surplus or residue (if any) of the monies to arise from such sale as aforesaid, unto the said N. O., his executors, administrators, or assigns, in or towards satisfaction and discharge of the said sum of £—— so advanced by him as aforesaid, with yearly interest for the same, after the rate of £—— per cent. per annum, computed from the day of the date of these presents; and after full payment and satisfaction of the said sum of £——, with all interest for the same, upon trust to pay over the surplus or residue (if any) of the monies arising from any such sale as aforesaid, unto the minister for the time being of the said chapel, for his own absolute use and benefit: PROVIDED ALSO, and it is hereby declared and agreed, that, from time to time and for ever hereafter, when and so often as by reason of the death, resignation, or refusal or incapacity to act of the said —— Lord Bishop of ——, A. B., C. D., E. F., G. H., I. K., and L. M., or any of them, or of any future trustee or trustees of the said chapel and premises to be appointed as hereinafter is mentioned, the number of acting trustees shall be reduced to four only or any less number, or there shall be no acting trustee for the time being, notice in writing of the vacancies for the time being shall, within three calendar months next after such event shall have occurred, be given by the minister for the time being of

Direction that the number of trustees shall be filled up whenever reduced to four;

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the said chapel to the surviving or continuing trustees or trustee for the time being of the said chapel (if any), or if there shall be no such trustee, then to the rector for the time being of the said parish of ——, accompanied with the names of six or more persons, each of whom may appear to such minister to be a proper and suitable person to fill the office of a trustee of the said chapel, out of which number, or from among any other persons who may be thought by them more suitable, the surviving or continuing trustees or trustee for the time being (if any), or if there shall be no surviving or continuing trustee for the time being, then the rector of the said parish of —— for the time being, shall by some deed or instrument in writing to be by them or him sealed and delivered in the presence of and attested by two or more credible witnesses, forthwith elect and appoint so many additional trustees as, together with the surviving or continuing trustees or trustee for the time being (if any), will make up the number of seven trustees: PROVIDED ALWAYS nevertheless, and it is hereby further agreed and declared, that, whenever any vacancy shall occur in the trust or management of the said chapel and premises by any of the ways or means hereinafter referred to, it shall be lawful for the surviving or continuing trustees or trustee for the time being of the said chapel and premises, forthwith to appoint any other person to be a trustee, in order to supply such vacancy, although the number of the trustees for the time being of the said chapel and premises shall not have been reduced to four, it being the intention of the parties to these presents that it shall be imperative upon the surviving or continuing trustee or trustees for the time being, or the rector of the said parish of —— as the case may be, to fill up the vacancies which shall have occurred in the number of trustees, whenever the same number shall be reduced to four or a less number, or there shall be no such trustee; and that the continuing trustees for the time being shall also be at liberty, if they shall think proper, to fill up any vacancy which shall have occurred as aforesaid, although the number may not thereby have been reduced to four:

—but that vacancies may be supplied although the number may not have been reduced to four.

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PROVIDED ALWAYS, and it is hereby declared, that the rector for the time being of the said parish church of —— shall, (if willing), at all times be one of the trustees of the said chapel, and that not more than three of such trustees including the rector for the time being of the said parish church of —— shall, upon every completion of the number of trustees by any new election or appointment as aforesaid, be domiciled or usually resident within the parish of —— aforesaid, or either of the adjoining parishes of ——, —— and ——; and that only such persons shall be eligible to the office of trustees as shall profess themselves members of the Established Church of England: PROVIDED ALSO, and it is hereby further agreed and declared, that, when and so often as it shall happen that any rector for the time being of the said parish church of ——, being a trustee for the time being of the said chapel, shall by cession, resignation, or in any other manner whatsoever, except by death, cease to be the rector of the said parish church, then and in such case such person, having so ceased to be rector as aforesaid, shall cease to be a trustee of the said chapel and premises, and the successor to the said rectory shall, if willing, be appointed in his place or stead to be a trustee of the said chapel and premises, jointly with the surviving or continuing trustees for the time being of the same premises. AND IT IS HEREBY DECLARED AND AGREED, that, when and so often as any new trustee or trustees shall be elected or appointed as aforesaid, all such assignments and assurances shall be made and executed at the expense of the trust funds of the said chapel as shall be necessary or deemed advisable for vesting the said chapel, trust estate, and premises in the surviving or continuing trustees or trustee for the time being, jointly with such new or additional trustees or trustee, or solely, as the case may require; and that the new trustees, who shall from time to time be elected and appointed, shall and may in all things act and assist in the management and execution of the trusts or powers to which they shall be appointed, in conjunction with the other then surviving or continuing trustees or trustee (if any) of the same premises, or solely, (as the case may be), as fully and effectually, and

The rector of the parish to be always a trustee (if willing), but not more than three trustees to be taken from that and certain other parishes.

Any person ceasing to be rector of the parish, to cease also to be a trustee of the chapel.

On the appointment of new trustees, the chapel to be vested in them by proper assurances, and such new trustees to exercise all the powers of the old trustees.

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with all the same power and powers, authority and authorities, to all intents and purposes whatsoever, as if they respectively had been originally made trustees in and by these presents: PROVIDED ALWAYS, and it is hereby further agreed and declared, that, in all cases in which the said several persons parties hereto of the fifth part, or the survivors of them, or other the trustees or trustee for the time being of the said chapel and premises, are hereinbefore or hereinafter directed, authorized, or required to do any act, or to exercise any discretion or authority, or to give any consent in the execution of the trusts hereby in them reposed, the acts, authorities, and consents of the greater part in number of the said trustees for the time being shall be equally binding and conclusive to all intents and purposes whatsoever, as far as the rules of law and equity will permit, as if all the trustees for the time being of the said chapel and premises had joined therein or consented thereto (*c*): AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the said E. F., G. H., I. K., and L. M., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sum of £——, £3 per cent. Consolidated Bank Annuities, purchased in their names as hereinbefore is mentioned, UPON TRUST, that they the said E. F., G. H., I. K., and L. M., and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall either permit and suffer the said sum of £——, £3 per cent. Consolidated Bank Annuities, to remain in its actual state of investment, or at any time or times, with the consent in writing of the minister for the time being of the said chapel, sell, transfer, or dispose of the same, or any part thereof, and with such consent as aforesaid, lay out and invest the money to arise by such sale, transfer, or disposition, in the names or name of the said E. F., G. H., I. K., and L. M., or the survivors or survivor of them, or the executors or administrators of such

All acts done by the major part of the trustees to be binding, as if done by all the trustees.

Trusts of the sum of stock purchased in the names of trustees;

—to allow the same to remain as actually invested, or to vary the securities;

(*c*) This clause, of course, will not supersede the necessity of all the trustees joining in any conveyance or lease which may be made of any part of the trust estate.

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survivor, in the purchase of a competent share or competent shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales, (but not in Ireland), And do and shall from time to time, with such consent as aforesaid, alter, vary, and transpose the said stocks, funds, or securities into or for other stocks, funds, or securities of the same or a like nature, as to them or him shall seem proper; AND DO AND SHALL stand and be possessed of and interested in the said sum of £——, £3 per cent Consolidated Bank Annuities, and the monies to arise by the sale, transfer, or disposition thereof, or any part thereof, and the securities in or upon which the same may be invested, upon trust to pay the dividends, interest, and annual produce thereof unto, or permit the same to be received by, the minister for the time being of the said chapel, for his own use and benefit, as a remuneration for the performance by him of divine service in the said chapel: PROVIDED ALWAYS, and it is hereby agreed and declared, that, if the said trustees hereinbefore named of the aforesaid trust-monies, stocks, funds, or securities, or any of them, or any trustee or trustees thereof to be appointed as hereinafter is mentioned, shall die or be absent from this kingdom more than twelve calendar months at any one time, or be desirous of being discharged of and from, or refuse, or decline, or become incapable to act in the aforesaid trusts, before the same shall be fully executed, then, and so often as the same shall happen, it shall be lawful for the surviving or continuing trustees or trustee for the time being of the same trust-monies, stocks, funds, and securities, (and for this purpose any trustee or trustees retiring from or declining to act in the aforesaid trusts shall, if willing to act in the exercise of this present power, be considered a continuing trustee or continuing trustees), or for the executors or administrators of the last surviving or continuing trustee for the time being, with the consent in writing of the minister for the time being of the said chapel, from time to time to appoint any other person to be a trustee or trustees in the stead of the trustee or trustees so dying or being absent

—and to pay the dividends thereof to the minister of the chapel for the time being.

Power of appointing new trustees of the stock.

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from this kingdom, or desiring to be discharged, or refusing, declining, or becoming incapable to act as last aforesaid; And that upon every such appointment the said trust-monies, stocks, funds, securities, and premises shall be assigned or transferred in such manner and so that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees thereof, or solely as the case may require; And every such new trustee shall (either before or after the said trust-monies, stocks, funds, securities, and premises shall have become vested as aforesaid,) have the same powers as if he or they had been originally named a trustee or trustees in these presents. AND IT IS HEREBY AGREED AND DECLARED, that when and as soon as a minister shall have been elected and chosen for the said chapel, under the provision in that behalf hereinbefore contained, three fit and proper persons, being renters of an entire pew or pews in the said chapel, shall be nominated and appointed to act as chapelwardens to the said chapel from the day of the date of their appointment, until Monday in Easter-week, which will be in the year of our Lord ——, or within five days thereafter; and on every succeeding Monday in Easter week, or within five days after each of the same days respectively, three other fit and proper persons, being renters of an entire pew or pews in the said chapel, shall be nominated and appointed to act as chapelwardens to the said chapel until the Easter Monday next ensuing the date of their respective appointments, and from thenceforward until some other persons shall have been appointed in their stead, to take upon themselves the duties of the said office: AND IT IS HEREBY AGREED AND DECLARED, that one of the said chapelwardens, to be appointed from time to time as aforesaid, shall be nominated by the officiating minister for the time being of the said chapel, and one other of them shall be nominated by the said several persons parties hereto of the fifth part, or the survivors of them, or the trustees for the time being of the said chapel, and the other of them shall be nominated by the renters of the pews of the said chapel, or the major part

Chapelwardens to be annually appointed.

By whom to be nominated.

of such renters to be therein assembled for that purpose: PROVIDED ALWAYS, and it is hereby agreed and declared, that if, from any cause whatsoever, it shall happen in any year that no appointment of chapelwardens for the year ensuing shall have been made within the time hereinbefore appointed in that behalf, then and in such case, and as often as the same shall happen, the chapelwardens for the time being of the said chapel shall continue and remain in office until the Easter next ensuing the time at which such appointment ought to have been made: PROVIDED ALWAYS, and it is hereby further agreed and declared, that, so often as it shall happen that any person who shall for the time being be a chapelwarden of the said chapel shall die, or refuse or become incapable to act in the duties of the said office, it shall be lawful for the party or person by whom the person so dying or refusing or having become incapable to act as aforesaid shall have been nominated a chapelwarden, to nominate and appoint some other fit and proper person, being a renter of an entire pew in the said chapel, in his place or stead, to be a chapelwarden jointly with the chapelwardens for the time being of the said chapel, and each such new chapelwarden shall exercise the said office for such and the same time, and with the same powers and authorities, as the person so dying or having refused or become incapable to act as aforesaid would have done in case no vacancy had occurred. AND IT IS HEREBY AGREED AND DECLARED, that proper books of account shall be kept by the said chapelwardens, and true and perfect entries made therein of all receipts and disbursements, and of all debts contracted in respect of the said chapel and premises, and of all such other matters, transactions, and things as are usually entered in the books of account kept by churchwardens or chapelwardens; and that the said books of account shall be delivered up by the said chapelwardens, on their retiring from the said office, to their successors in the said office; and that the several persons parties hereto of the fifth part, or the survivors of them, or other the trustees or trustee for the time being of the said chapel, shall at all reasonable times be entitled to call for the production of

Chapelwardens once appointed to remain in office till the appointment of their successors.

Provision for filling up the vacancy caused by the death of a chapelwarden during his year of office.

Books of account to be kept by the chapelwardens for the time being.

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the said books of account, and to inspect and examine the same, and take copies thereof or extracts therefrom. AND IT IS HEREBY AGREED AND DECLARED, that the said chapelwardens shall provide a proper book for the registry of all burials which shall be performed at the said chapel, and shall also provide a box for the safe custody of the said book of registry, which said box and book of registry shall be for ever thereafter kept in the vestry room of the said chapel, and the key of such box shall be kept by the officiating minister for the time being of the said chapel; and the said chapelwardens are hereby directed and required, within one calendar month next after the death of any minister of the said chapel, to give notice thereof in writing to the said several persons parties hereto of the fifth part, or the survivors of them, or other the trustees for the time being of the said chapel. AND IT IS HEREBY AGREED AND DECLARED, that it shall be lawful for the chapelwardens for the time being of the said chapel, and they are hereby directed and required from time to time, to enter into contracts with any person or persons for a lease or leases unto such person or persons of one or more pew or pews in the said chapel, or of one or more sitting or sittings in any of the said pews, (except the seats or pews which for the time being shall be appropriated to the use of the poor as free sittings as hereinbefore is mentioned), for such term or number of years not exceeding in any case the term of twenty-one years, as the minister for the time being of the said chapel shall by writing under his hand direct or appoint, and at such a scale of rents as the bishop of the diocese for the time being shall from time to time by writing under his hand sanction and approve; yet so, nevertheless, that no premium or foregift shall be received or taken upon the letting or upon the contract for the letting of such pew or sitting. AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the said chapelwardens for the time being do and shall collect and receive the rents of the said pews and seats which shall be so contracted to be leased as aforesaid, and also the rents of any pews or seats which shall from time to time have been leased by the said several persons parties

Register book of burials to be kept by chapelwardens.

Chapelwardens to let pews and sittings as the minister shall direct;

—and to collect the rents of pews and sittings;

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hereto of the fifth part, or the survivors of them, or other the trustees for the time being of the said chapel, under the trust or direction in that behalf hereinbefore contained; AND DO AND SHALL stand possessed of and interested in the said monies so to be received upon and for the trusts, intents, and purposes hereinafter expressed or declared of or concerning the same, (that is to say), UPON TRUST that they the said chapelwardens for the time being on Monday in Easter week in every year, by and out of the same trust-monies, in the first place, pay and apply the annual sum of one pound unto the said E. F. and his successors, rectors for the time being of the said parish church of ——, in consideration of or by way of compensation for the resignation and relinquishment intended to be hereinafter made by the said E. F. as such rector as aforesaid, on the part of himself and his successors, rectors for the time being of the said parish church of ——, of the right of nominating and appointing the minister of the said chapel; AND DO AND SHALL, in the next place, pay over unto the said several persons parties hereto of the fifth part, or the survivors of them, or other the trustees for the time being of the said chapel and premises, the annual sum of £——, or in case such annual sum shall from time to time be by the said trustees found insufficient, then such increased annual sum not exceeding in the whole the sum of £——, as to the several persons parties hereto of the fifth part, or the survivors of them, or other the trustees for the time being of the said chapel, shall seem necessary in that behalf, which annual sum so to be paid to the said trustees shall be held and applied by them as a fund for defraying the current charges and expenses of repairing, cleansing, and beautifying the said chapel and premises, and of insuring the same from loss or damage by fire, and of paying the salaries, wages, and allowances of the appointed officers and servants of the said chapel, and all other outgoings and expenses which by the said trustees may be considered necessary or expedient to be incurred in or about the management of the said chapel and premises; AND DO AND SHALL from time to time, as soon as they shall receive the same, pay over the residue

—and out of the monies so received, pay an annual sum to the rector of the parish;

—and another annual sum or sums to the trustees of the chapel, to defray expenses and repairs;

—and pay the residue to the minister.

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or surplus (if any) which shall remain after satisfying the trusts and purposes aforesaid, of the said sums of money so to be received as aforesaid, unto the minister of the said chapel for the time being for his own use and benefit. AND IT IS HEREBY AGREED AND DECLARED, that, out of the said annual sum of £—— or such increased annual sum as aforesaid, the said several persons parties hereto of the fifth part, or the survivors of them, or other the trustees for the time being of the said chapel and premises, shall in every year appropriate and set apart the sum of £—— at the least, for the purpose of defraying the current expenses of repairing, cleansing, and beautifying the said chapel and premises; and in case it shall happen in any year that either the annual sum of money firstly hereinbefore directed to be set apart for defraying the current expenses of the said chapel, or the said annual sum of £—— lastly hereinbefore directed to be specially appropriated thereout for repairs as aforesaid, shall exceed the respective expenses which shall have occurred in the current year, it shall be lawful for the said several persons parties hereto of the fifth part, or other the trustees for the time being of the said chapel and premises, to invest the surplus fund which shall remain in their hands after defraying such respective expenses as aforesaid, in their names, in the purchase of a competent share or competent shares of any of the parliamentary stocks or public funds of Great Britain, or at interest upon government or real securities in England or Wales (but not in Ireland), and to alter and vary the same stocks, funds, and securities, and again to convert the same into money at their discretion, and to apply the same trust-monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof as occasion shall require, to and for the purposes of repairing, cleansing, and beautifying the said chapel and premises. AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the minister of the said chapel shall have the sole right and privilege of appointing the clerk and sexton, and all other officers and servants of the said chapel except as hereinbefore is mentioned, at such salaries or wages as to the chapelwardens for the time being of the

Trusts of the annual sum to be paid to the trustees for expenses and repairs, with power to make temporary investments of any surplus thereof.

The minister to have the sole right of appointing chapel officers.

said chapel or the major part of them shall seem proper; AND ALSO that the said minister shall have the free and uncontrolled disposal of two third parts of all monies collected and received on the celebration of the Holy Sacrament of the Lord's Supper, and that the remaining one third part shall be from time to time paid over by the said chapelwardens to the rector for the time being of the said parish church of ——: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that, on every funeral which shall take place at or within the said chapel, the rector of the said parish church of ——, and also the clerk and sexton of the said parish church respectively for the time being, shall be entitled to the same dues or fees as they would respectively have been entitled to in case such funeral had been performed at or within the said parish church of ——, or the parochial cemetery thereunto belonging, and that the surplus (if any) of the dues or fees which shall be received upon every such funeral shall belong to the minister, clerk, and sexton for the time being of the said chapel respectively (*d*): AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the rector for the time being of the said parish church of —— shall be entitled to the same dues or fees for every monumental stone or slab or other erection which shall from time to time be erected, set up, or fastened within the said chapel, as he would have been entitled to in case such monumental stone or slab or other erection had been erected, set up, or fastened within the parish church of —— aforesaid, and the surplus (if any) of the dues which shall be received on such occasions shall belong to the minister for the time being of the said cha-

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Two-thirds of sacramental alms to be disposed of by the minister, and one-third by the rector of the parish.

The rector, clerk, and sexton of the parish to be entitled to certain fees on burials;

—and the rector to certain fees on monuments.

(*d*) A new public chapel cannot be erected (except under the special statutes referred to supra, p. 569, n. *a*) without a provision for the indemnity and compensation of the incumbent of the mother church—at least, if his pecuniary interests are affected by the erection; see p. 569, n. *a*. Hence the provisions in the text; as, by the erection of the new chapel, with a burying ground, the rector of the parish loses the fees on the burials, which would otherwise have been in the parish church.

On the erection of a new church, the incumbent of the mother church must be compensated for pecuniary loss.

CONVEYANCE AND ENDOWMENT OF A CHAPEL OF EASE.

pel (*e*): AND IT IS HEREBY FURTHER AGREED AND DECLARED, that proper entries of all burials which shall take place at or in the said chapel shall be made by the officiating minister for the time being of the said chapel, as well in the parochial register-book as in the register or book hereinbefore directed to be made for that purpose, in the vestry room of the said chapel: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said —— Lord Bishop of ——, A. B., C. D., E. F., G. H., I. K., and L. M., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, and of the said E. F., G. H., I. K., and L. M., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, or of any other trustees or trustee for the time being acting in the execution of the trusts of these presents, for any sum or sums of money payable to them or him under or by virtue of these presents, or in the execution of the trusts hereof, shall be a sufficient and effectual discharge or sufficient and effectual discharges for the money in such receipt or receipts respectively expressed or acknowledged to be received, and that the person or persons to whom the same shall be given, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application thereof: PROVIDED ALWAYS, and it is hereby declared, that the said several trustees hereby nominated and appointed, or to be appointed by virtue of the powers hereinbefore contained, and each and every of them, and the heirs, executors, administrators, and assigns of them, each and every of them, shall be charged and chargeable respectively only for such monies as they shall respectively actually receive by virtue of the trusts hereby in them reposed, notwithstanding his or their or any of them giving or signing or joining in

Proper entries of all burials to be made by the minister.

Trustees' receipt clause.

Proviso for the indemnity of trustees;

(*e*) See the last page, n. *d*.

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giving or signing any receipt or receipts for the sake of conformity, and any one or more of them shall not be answerable or accountable for the other or others of them, or for the acts, receipts, neglects, or defaults of the other or others of them, but each and every of them only for his and their own acts, receipts, neglects, or defaults respectively; and that any one or more of them shall not be answerable or accountable for any banker, broker, or other person with whom or in whose hands any part of the said trust-monies shall or may be deposited or lodged for safe custody or otherwise in the execution of the trusts of these presents or any of them; and that they or any of them shall not be answerable or accountable for the insufficiency or deficiency of any security or securities, stocks or funds in or upon which the said trust-monies or any part thereof shall be placed out or invested, nor for any other misfortune, loss, or damage which may happen in the execution of the aforesaid trusts or in relation thereto, except the same shall happen by or through their own wilful default respectively; AND ALSO THAT it shall be lawful for them the said trustees in these presents named, and such future trustee or trustees so to be appointed as aforesaid, and every or any of them, their and every of their heirs, executors, administrators, and assigns, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to retain to and reimburse himself and themselves respectively, and also to allow to his and their co-trustee and co-trustees all costs, charges, damages, and expenses which they or any of them shall or may suffer, sustain, expend, disburse, be at, or be put unto in or about the execution of the aforesaid trusts or in relation thereunto. AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, and particularly in consideration of the yearly sum so directed to be paid by the chapelwardens for the time being of the said chapel to the said E. F. and his successors, rectors of the said parish church of ——, as hereinbefore is mentioned, he the said E. F., as such rector of the parish church of —— as aforesaid, with the

—and for the payment of their expenses.

Witnesseth further, relinquishment by the rector in favour of the trustees of the right of nominating the minister.

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privity, consent, and concurrence of the said G. H. and —— Lord Bishop of —— as such patron and ordinary respectively of the rectory of the said parish church as aforesaid, testified by their respectively being parties to and executing these presents, doth by these presents for himself and his successors, rectors of the said parish church of ——, grant, assign, resign, relinquish, and for ever quit claim unto the said several persons, parties hereto of the fifth part, their heirs and assigns, ALL THAT the right of nomination and appointment of the officiating minister of the aforesaid chapel, TO THE INTENT and purpose that the same right of nomination and appointment may for ever hereafter be used, exercised, and enjoyed by them the said several persons parties hereto of the fifth part, their heirs and assigns, or other the trustees for the time being of the said chapel and premises, in the manner hereinbefore directed and appointed in that behalf (*f*): PROVIDED ALWAYS, and it is hereby further agreed and declared, that a correct list of all the trustees for the time being of these presents, and also of the chapelwardens for the time being of the said chapel, shall be kept constantly hung up in the vestry-room of the said chapel, and that such list shall be signed by the officiating minister for the time being of the said chapel: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the keys of the said chapel shall be kept by the minister thereof for the time being, who shall allow the chapelwardens of the said chapel the use of such keys whensoever they or any of them shall require the same for any lawful purpose. IN WITNESS &c.

A list of the trustees and chapelwardens for the time being to be signed by the minister and hung up in the vestry.

Keys of the chapel to be kept by the minister.

THE SCHEDULE referred to in the above-written indenture.

(*f*) See supra, p. 569, n. *a*.

LXXVI.

AWARD *on a Submission to* ARBITRATION *by a* VENDOR *and* PURCHASER.

AWARD.

TO ALL TO WHOM these presents shall come, I, A. B., of &c., send greeting. WHEREAS divers disputes and differences have arisen between C. D., of &c., and E. F., of &c., (assignees of the estate and effects of X. Y., of &c.), and G. H., of &c., respecting a certain estate situate at —— in the county of ——, and an action of ejectment hath been brought, and some proceedings had therein: AND WHEREAS, in order to put an end to the said differences and disputes, and to the said action, the said C. D. and E. F., and the said G. H., by articles of agreement under their respective hands and seals, bearing date the —— day of ——, covenanted with each other that they, the said C. D. and E. F., and each of them, their and each of their heirs, executors, and administrators, and the said G. H., his heirs, executors, and administrators respectively, would on their respective parts well and truly stand to, obey, abide by, perform, fulfil, and keep the award, order, arbitrament, final end and determination of me, the said A. B., of and concerning the matters so referred or agreed to be referred as aforesaid, or any of them, so as I, the said A. B., should make my award in writing under my hand and seal, ready to be delivered to the said parties in difference, or either of them who should desire the same, on or before the —— day of —— then next ensuing, or on or before such further day as I, the said A. B., should ultimately appoint and signify by memorandum in writing under my hand to be indorsed on the said agreement; It being thereby agreed that I, the said A. B., should have power by such memorandum as aforesaid, to enlarge the time for making any award as I should think proper, and that the costs of the said ejectment should be in the discretion of me the said A. B., and

Recital of disputes having arisen respecting an estate;

—of the submission to arbitration;

AWARD.

that I should award to whom and by whom the same should be paid, and that it should be lawful for me, the said A. B., from time to time to make a separate award or separate awards as to all or any of the matters in difference between the said parties, and which award or awards should be observed without waiting for any further award, or the final award of and concerning the other matters in difference, and notwithstanding such other matters should not be determined (*a*): AND WHEREAS, by a memorandum in writing under my hand indorsed on the said articles of agreement, bearing date the —— day of ——, I did enlarge the time for making my award under the said reference to the —— day of —— then next (*b*). NOW KNOW YE, that I the said A. B., having taken upon myself the charge of the said arbitrament, and having heard and duly perused and considered the allegations with papers and vouchers of both the said parties brought before me concerning the premises, do by this writing under my hand and seal make my award and final determination of and concerning the premises in manner following; (that is to say), I DO HEREBY AWARD and direct, that the title to the said estate shall be accepted by the said G. H. as it stands, and that the several drafts of conveyance and assignments of terms on the —— day of this instant month of ——, signed with my name as being the drafts referred to by this my award, shall be engrossed at the expense of the said G. H., and the engrossments shall be delivered to the said C. D. and E. F. on or before the —— day of —— next, and that the said C. D. and E. F. shall execute and cause the same to be executed by the conveying parties on or before the —— day of —— next, on which day the same shall be deposited in the office of Messrs. —— in ——, to be delivered to the said G. H. on his making the payment hereinafter

—of the arbitrator's having enlarged the time for making the award.

Award.

(*a*) See the Precedent of a submission to arbitration, ante, Vol. 3, Precedent 6, p. 120, and the notes thereto.

As to the delivery of the award at the day fixed.

(*b*) As to the delivery of the award on the day fixed, see ante, Vol. 3, p. 128, n. *k*. See too the recent cases of *Brooke* v. *Mitchell*, 6 Mees. & Wels. 473: *Parbery* v. *Newnham*, 7 Mees. & Wels. 378: *In re Dodington* v. *Bailward*, 5 Bing. N. C. 591: *Hallett* v. *Hallett*, 5 Mees. & Wels. 25.

mentioned: AND I DO HEREBY AWARD, that the said G. H. shall on the said —— day of —— next at the said office of Messrs. —— pay the sum of £—— and interest on the said sum of £——, after the rate of 5*l.* per cent. per annum, to be computed from the —— day of ——, to the said C. D. and E. F., and I direct them to receive the same accordingly in satisfaction of all claims in respect of the purchase-money for the said sum of £—— and interest, and I direct that the deposits paid on the purchase of the said estate to Messrs. ——, of ——, amounting altogether to the sum of £——, shall be paid and belong to the said C.D. and E. F.: AND I DO HEREBY FURTHER AWARD and direct, that the rents and profits of the said estate which have accrued due since the —— day of —— shall belong to the said G. H.: AND I DO HEREBY FURTHER AWARD and direct, that the said action of ejectment shall be discontinued, and all costs of the plaintiff, to be taxed by the proper officer, shall be paid by the said G. H. to the said Messrs. —— on or before the —— day of —— next, and that the said G. H. shall pay his own costs in the said action of ejectment; And I direct that the costs of valuation of part of the said estate made by the said Messrs. ——, and of the opinion of ——, shall be paid by the said C. D. and E. F.: AND I DO HEREBY FURTHER AWARD AND DIRECT, that each party shall bear and pay his own costs attending the reference made to me, except the costs of this my award, and that the expenses of this my award shall be paid in manner following; (that is to say), one third part thereof by the said C. D. and E. F., and the two other third parts thereof by the said G. H. (*c*). IN WITNESS whereof I, the said A. B., have hereunto set my hand and seal, this —— day of ——, 18— (*d*).

AWARD.

Further award.

Further award.

Further award.

Further award.

In witness &c.

(*c*) As to the power of an arbitrator to award costs, see ante, Vol. 3, p. 131, n. *o*.

(*d*) With regard to the powers of arbitrators generally, see the notes, ante, Precedent 6, Vol. 3, p. 120. Watson on Awards, Chs. 4, 5, & 6.

As to drawing up awards, and the circumstances under which they will be set aside, see Watson on Awards, Chs. 7 & 9; and for a variety of Precedents of awards, see Watson on Awards, pp. 373—428, 2nd Edit.

LXXVII.

COVENANT TO PRODUCE DEEDS.

COVENANT *by a* VENDOR *with a* PURCHASER *to* PRODUCE TITLE DEEDS (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*covenantor*], of the one part; and C. D., of &c., [*covenantee*], of the other part: WHEREAS, by an indenture bearing even date with, but executed before the execution of these presents, and made or expressed to be made between [*parties*], in pursuance of the contract for purchase and for the considerations therein mentioned, a messuage or tenement, farm, lands, and hereditaments, commonly called or known by the name of ——, situate in the parish of ——, in the county of ——, and in the said indenture particularly described, were, with their rights, easements, and appurtenances, conveyed, and assured, and limited to such uses, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations as the said A. B., by any deed or deeds, writing or writings, with or without power of revocation and new appointment, should direct, limit, or appoint, and in default of, and until, and subject to such direction limitation or appointment, to the use of the said A. B. and his assigns during his life, with remainder to the use of the said —— and his heirs during the life of the said A. B., in trust for him and his assigns, with remainder to the use of the said A. B., his heirs and assigns: AND WHEREAS the several deeds, evidences, and writings specified in the schedule hereunder written or hereunto annexed, relate as well to the hereditaments comprised in the hereinbefore recited indenture of even date

Recital of the conveyance to the purchaser;

—that the title-deeds relate also to other property;

(*a*) As to the custody and production of title-deeds, and covenants for their production between vendor and purchaser, see ante, Vol. 3, pp. 44—47, note.

with these presents, as to other hereditaments of greater value belonging to the said A. B. (*b*): AND WHEREAS, upon the treaty for the said purchase, it was agreed that the said deeds, evidences, and writings should remain in the custody or possession of the said A. B., his heirs or assigns; And that the said A. B. should enter into the covenant hereinafter contained (*c*). NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, He, the said A. B., doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that he the said A. B., his heirs or assigns, shall and will from time to time, and at all times hereafter, upon every reasonable request in writing for that purpose given to him or them by the said C. D., his heirs, appointees, or assigns, or any person or persons lawfully or equitably claiming or to claim any estate, right, title, or interest of, in, or to the said hereditaments and premises comprised in the hereinbefore recited indenture of even date with these presents, or any of them, or any part thereof, at the costs and charges of the person or persons requiring the same, produce and shew forth, or cause or procure to be produced and shewn forth to him, them, or any of them, or to such person or persons as he or they shall desire or require, or at any trial, hearing, or examination in any court of law, equity, or other judicature, or in the execution of any commission or elsewhere as occasion shall be or require, ALL AND EVERY or any of the deeds, evidences, and writings specified in the schedule hereunder written or hereunto annexed, for the

COVENANT TO PRODUCE DEEDS.

—that the vendor is to retain them, and covenant for their production, &c.

Witnesseth covenant to produce the deeds when required;

(*b*) If the covenantor be not the absolute owner, the expression must be varied to suit the fact. If, for instance, he be tenant for life, instead of, "belonging to the said A. B.," say, "of which the said A. B. is tenant for life;" and let the next recital be simply,—

Variations when the covenantor is not absolute owner.

"AND WHEREAS, upon the treaty for the said purchase, it was agreed that the said A. B. should enter into the covenant hereinafter contained."

(*c*) See *supra*, note *b*.

COVENANT TO PRODUCE DEEDS.

manifestation, defence, and support of the estate, title, and possession of the said C. D., his heirs, appointees, or assigns, and all and every other person or persons claiming or to claim as aforesaid: AND SHALL AND WILL, from time to time, and all times hereafter, at the costs and charges of the said C. D., his heirs, appointees, or assigns, or any other person or persons claiming or to claim as aforesaid, make or cause to be made and delivered to the said C. D., his heirs, appointees, or assigns, or any other person or persons claiming or to claim as aforesaid, such true and attested copies, or true copies unattested of the same deeds, evidences, and writings, or any of them, as he or they may require (*d*), AND SHALL AND WILL in the mean time keep (*e*) the same deeds, evidences, and writings safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that, if the said A. B., his heirs or assigns, shall dispose of such of the hereditaments to which the said deeds, evidences, and writings relate, as are not comprised in the hereinbefore recited indenture of even date with these presents, and shall thereupon at his or their own costs and charges procure the person or persons to whom the same hereditaments shall be so disposed of, to enter into a covenant with the said C. D., his heirs or assigns, to the same purport and effect as the covenant hereinbefore contained, then and in such case, and imme-

—and furnish copies of them;

—and safely keep the same.

Proviso for making void the covenant, if the covenantor dispose of his property and procure the purchaser to enter into a new covenant with the present purchaser to the same purport as the present covenant.

if other cont. ["Lastly"]

Attested copies —cost of, and covenant to furnish.

(*d*) In the absence of special stipulation, a vendor must, in the first instance, furnish the purchaser with one attested copy of every document (not on record), which is not to be delivered to the purchaser, ante, Vol. 3, p. 47, n. *e*; but it is always understood, that any subsequent attested copies which may be required must be at the expense of the person requiring them.

A vendor is, perhaps, not bound to covenant to furnish attested or other copies, but when there is a covenant for production, a covenant to furnish copies is usually added. See 2 Sugd. V. & P. 124, 10th Edit.

Variation when the covenantor is not absolute owner.

(*e*) If the covenantor be not the absolute owner of the property in respect of which the title-deeds are retained, (see the last page, n. *b*.), the words, "or cause to be kept," had better be introduced here.

diately thereupon, the covenant hereinbefore contained shall become void and of no effect (*f*). IN WITNESS &c.

COVENANT TO PRODUCE DEEDS.

THE SCHEDULE referred to in the above-written Indenture.

(*f*) This proviso should not be inserted by the purchaser's counsel, unless its insertion has been expressly stipulated for. It is obvious, that, for many reasons, a covenant to be entered into at a future time may be less convenient or effective than the covenant entered into upon the purchase, and it does not appear that the vendor is entitled (in the absence of express stipulation) to have such a proviso introduced into the deed of covenant. See 2 Sudg. V. & P. 123, 10th Edit. When, however, the parties originally covenanting are assignees of a bankrupt, it seems that they are entitled to have the covenant limited to the time of their continuance as assignees, *Ex parte Stuart*, 2 Rose, 215; and when the covenanting parties are trustees or mortgagees, their liability is usually limited by the proviso in the text, or to the period of their retaining the control of the title-deeds.

Proviso limiting the duration of a covenant for the production of title-deeds.

LXXVIII.

COVENANT *to* PRODUCE DEEDS *by a Purchaser from a Person who had covenanted to produce them on a former occasion, and* RELEASE *of the former* COVENANT *by the Covenantee* (*a*).

COVENANT TO PRODUCE DEEDS AND RELEASE.

THIS INDENTURE, made &c., Between A. B., of &c., [*covenantor*], of the first part; C. D., of &c., [*the former covenantor and present releasee*], of the second part; and E. F., of &c., [*covenantee*], of the third part: WHEREAS by an indenture of release, bearing date the —— day of ——, grounded on a lease for a year, and made or expressed to be made between [*parties*], divers

Parties.

Recital of a conveyance of certain estates, and of a cove-

(*a*) See supra, n. *f*. It appears, however, that on the present occasion the acceptance of a new covenant in lieu of the old one is a voluntary act on the part of the covenantee, the original deed containing no proviso to that effect.

COVENANT TO PRODUCE DEEDS AND RELEASE.

hereditaments in the parish of ——, in the county of ——, in the said indenture particularly described, were with the appurtenances released, limited, and assured to the use of the said E. F., his heirs and assigns; And in the said indenture of release, after reciting that the several deeds mentioned in the schedule thereunder written related to the title not only of the premises thereby released, or expressed and intended so to be, as aforesaid, but also of other hereditaments belonging to the said C. D., And that the said C. D. had agreed to enter into such covenant as was thereinafter contained, the said C. D., in pursuance of the said agreement, did thereby for himself, his heirs, executors, and administrators, covenant with the said E. F., his heirs and assigns, in manner in the said indenture of release expressed, for the production and safe custody of the deeds, papers, and writings mentioned in the said schedule to the said indenture of release: AND WHEREAS by indentures of lease and release, the lease bearing date the day before the day of the date of the release, and the release bearing even date with, but executed before the execution of these presents, and made or expressed to be made between [*parties*], divers hereditaments, situate in the said parish of ——, and in the said indentures particularly described, and which had been purchased of the said C. D. by the said A. B., and included the said hereditaments belonging to the said C. D. as aforesaid, were with their respective appurtenances conveyed and assured by and by the direction of the said A. B. to such uses and upon such trusts as the said A. B. should appoint, and, in default of and until such appointment, to the use of the said A. B. and his assigns for his life, without impeachment of waste, with remainder to the use of the said G. H. and his heirs during the life of the said A. B., in trust for him and his assigns, with remainder to the use of the said A. B., his heirs and assigns: AND WHEREAS the schedule hereunder written or hereunto annexed is a copy of the schedule to the said indenture of the —— day of ——: AND WHEREAS, upon the treaty for the said purchase by the said A. B., it was agreed that the deeds, papers, and writings specified in the said schedule to these presents should be delivered to the

—covenant for the production of the title-deeds;

—of the conveyance by the covenantor to another person of the lands to which the title-deeds covenanted to be produced relate;

—that the schedule to this deed is a copy of the former schedule of deeds;

—of the agreement for the

said A. B., AND THAT the said A. B. should enter into such covenant with the said E. F., his heirs and assigns, as is hereinafter contained, being a covenant in all respects similar to the covenant by the said indenture of the —— day of —— entered into by the said C. D. with the said E. F. with respect to the same deeds, papers, and writings, AND that the said E. F. should, in manner hereinafter mentioned, release the covenant so entered into by the said C. D. by the said indenture of the —— day of ——, with respect to the same deeds, papers, and writings (*b*). NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, he, the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., his heirs and assigns, &c. [*the covenant to be precisely the same as the former covenant*]. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, he the said E. F. doth, by these presents, acquit, release, and discharge the said C. D., his heirs, executors, and administrators, and every of them, of and from the said covenant entered into by the said C. D. in and by the said indenture of the —— day of ——, with respect to the deeds, papers, and writings specified in the schedule to these presents, and of and from all actions, suits, claims, and demands whatsoever, either at law or in equity, which he the said E. F., his heirs, executors, administrators, or assigns, or any of them, now have or hath, or shall or may, or could or might have against the said C. D., his heirs, executors, or administrators, or any of them, upon, under, or by reason of the said covenant, or in anywise relating thereto (*c*). IN WITNESS &c.

COVENANT TO PRODUCE DEEDS AND RELEASE.

transfer of the deeds—the new covenant—and the release;

Witnesseth covenant to produce the deeds.

Witnesseth further, release of the former covenant.

THE SCHEDULE referred to in the above-written indenture.

(*b*) The release ought not to be contained in this deed, which will remain in the possession of the releasor, the covenantee, but should be given by a separate deed indorsed upon the original deed of covenant, which will be given up to the releasee, the original covenantor.

Release should be in a deed which will remain with the releasee.

(*c*) See supra, n. *b*.

LXXIX.

APPORTIONMENT OF AN ENTIRE RENT AMONG SEVERAL PURCHASERS OF THE REVERSION.

DEMISE *of several* MESSUAGES *for the purpose of* APPORTIONING *an* ENTIRE RENT *reserved on a Lease thereof among the Persons who had* SEVERALLY *become* PURCHASERS *of the same Messuages* (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., and C. D., of &c., [*vendors*], of the first part; E. F., of &c., G. H., of &c., I. K., of &c., and L. M., of &c., [*purchasers*], of the second part; and N. O., of &c., [*trustee*], of the third part. [*Recital of a conveyance by bargain and sale inrolled, and common recovery to uses to bar dower in favour of X. Y.; see ante Vol. 3, pp. 221, 210.*]

Recital of conveyance of lands to uses to bar dower;

—of a sale by auction in lots to the several purchasers;

AND WHEREAS the said messuages or tenements and hereditaments hereinafter particularly mentioned, and intended to be hereby demised, were put up to sale by public auction by Mr. ——, auctioneer, at ——, on the —— day of ——, in —— lots, pursuant to a printed particular, and at the said sale the said E. F. was the purchaser of the lots one, two, and three, in the said particular; the said G. H. was the purchaser of the lots four and five; the said I. K. was the purchaser of lot six; and the said L. M. was the purchaser of lot seven; and each of them thereupon paid a deposit of £—— per cent. on account of his purchase-money: AND WHEREAS it was stated in the said particular of sale that the said lots one, two, three, four, five, six, and seven, were all on lease to Mr. —— for a term,

—of the property sold being on lease, and of a provision

Apportionment of rent among several purchasers of a reversion.

(*a*) As to the apportionment of rent reserved on a demise among several purchasers of a reversion, see ante, Vol. 3, p. 73, n. *a*. See, too, *Roberts* v. *Snell*, 1 Mann. & Grang. 577.

As to the apportionment of rent in point of time between vendor and purchaser, see *Flinn* v. *Calow*, 1 Mann. & Grang. 589.

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which would expire at ——; and it was provided by the same particular, that the apportioned ground-rents for lots one, two, and three respectively, should be the yearly sums therein mentioned, amounting together to the yearly sum of £——; for lots four and five the yearly sums therein mentioned, amounting together to the yearly sum of £——; for lot six the yearly sum of £——, and for lot seven the yearly sum of £——; making altogether the yearly rent or sum of £——, at which the whole of the said lots are holden by the said Mr ——, by virtue of and under an indenture of lease dated the —— day of ——, for a term of twenty-one years, commencing from the —— day of ——. [*Recital of a conveyance by the vendor (on his going abroad) to A. B. and C. D., their heirs and assigns, in trust to complete the contracts entered into; or if those contracts should go off, to re-sell—see the Precedent of such a conveyance, ante, Vol. 3, pp. 288 et seq.*] AND WHEREAS the said several persons parties hereto of the second part have, previously to the execution of these presents, paid the parts remaining unpaid as aforesaid of their respective purchase-monies for the said lots purchased by them respectively as aforesaid unto the said A. B. and C. D., as such trustees as aforesaid, and it is intended that the hereditaments comprised in the same lots respectively shall be conveyed to the said several purchasers thereof respectively by deeds of conveyance already prepared and engrossed, and intended to be executed immediately after the execution of these presents: AND WHEREAS, for the purpose of establishing the apportionment of the said yearly rent of £——, reserved by the said indenture of the —— day of —— [*the lease*], among the said several persons parties thereto of the second part, pursuant to the terms of the said particular of sale, and for preserving the means and remedies of enforcing the payment of the same yearly rent, the said A. B. and C. D. have, at the request of the said several persons parties hereto of the second part, (testified by their being parties to and executing these presents), agreed to demise the said hereditaments hereinafter mentioned or referred to, and intended to be hereby demised to the

—made in the particular for apportioning the rent among the several lots;

—of a conveyance of the property to trustees to complete the sales;

—of the entire purchase-monies having been paid, and of the intention that the conveyances to the purchasers shall be immediately executed;

—of the agreement to demise to a trustee for the purchasers for a term of years, to secure the apportionment of the rent.

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said N. O., his executors, administrators, and assigns, in manner, for the term, and upon the trusts hereinafter mentioned and declared. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of ten shillings to the said A. B. and C. D. paid by the said N. O. at or immediately before the sealing and delivery of these presents, (the receipt whereof the said A. B. and C. D. do hereby acknowledge), they, the said A. B. and C. D., on the nomination of the said E. F., G. H., I. K., and L. M., (testified by their being parties to and executing these presents), do and each of them doth, by these presents, bargain, sell (*b*), and demise unto the said N. O., his executors, administrators, and assigns, ALL THOSE [*parcels*], and all other the hereditaments and premises (if any) comprised in the said indenture of the —— day of —— [*the lease*], TOGETHER WITH &c. [*General words*]. TO HAVE AND TO HOLD the said messuages or tenements and hereditaments, and all and singular other the premises hereby bargained, sold, and demised, or expressed and intended so to be, (subject to the said indenture of the —— day of —— [*the lease*]), unto the said N. O., his executors, administrators, and assigns, from the —— day of ——, for the term of —— years and —— days thence next ensuing, upon and for the trusts, intents, and purposes hereinafter expressed and declared of and concerning the same, (that is to say), IN TRUST that the said N. O., his executors, administrators, and assigns, do and shall from time to time during the said term hereby created, when and as the said yearly rent of £—— reserved by the said indenture of the —— day of ——, [*the lease*], shall become due and payable, apply for and receive the same yearly rent, and, if necessary or advisable, take, use, and pursue all lawful ways or means by action, suit, entry, distress, or otherwise, for enforcing the payment of the said yearly rent of £——, or such part or parts thereof as shall from time to time be due and unpaid: AND DO AND SHALL from time to time, when and as the said yearly rent of

Witnesseth demise.

Parcels.

Habendum for a term to a trustee.

In trust to receive the entire rent;

—and pay the same to the

(*b*) See ante, Vol. 3, p. 579, n. *c*.

£—— shall be received by the said N. O., his executors or administrators, pay the yearly sum of £——, part thereof, unto the said E. F., his heirs and assigns, the yearly sum of £——, other part thereof, unto the said G. H., his heirs and assigns, the yearly sum of £——, other part thereof, unto the said I. K., his heirs and assigns, and the yearly sum of £——, remaining part thereof, unto the said L. M., his heirs and assigns: AND EACH OF THE SAID several persons, parties hereto of the second part, so far as relates to his own acts and deeds, and the acts and deeds of his heirs and assigns, doth hereby for himself, his heirs, executors, and administrators, covenant with the said N. O., his executors, administrators, and assigns, that they the several persons, parties hereto of the second part, and their respective heirs and assigns, shall and will, according to their respective shares and proportions of the said yearly rent of £——, from time to time and at all times save, defend, and keep harmless the said N. O., his executors, administrators, and assigns, of and from all costs, charges, and expenses which he or they shall or may at any time or times pay, bear, incur, or be put unto, in or about the receiving, recovering, and enforcing payment of the said yearly rent of £——, or any part thereof. [*Trustee's receipt clause, supra, p.* 511. *Provisoes for the indemnity of the trustee, and the payment of his expenses, ante, Vol.* 4, *pp.* 326, 327, *or the short form, p.* 329] (*c*). IN WITNESS &c.

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purchasers in due proportion.

Several covenants by the purchasers in due proportion to indemnify the trustee.

Trustee clauses.

(*c*) As the trusts were (in the case in the text) to be of short duration, it was not deemed necessary to insert a provision for the appointment of a new trustee; and the demise was made to one trustee, in order that the rent might be more easily paid. In many cases, however, it may be expedient to demise to two trustees, and to provide for the appointment of new trustees in the usual events.

Reason for making the demise to one trustee, and not providing for the appointment of a new trustee.

LXXX.

DEFEAZANCE OF A LEASE ON ASSIGNMENT WITHOUT LICENSE.

DEED *of* DEFEAZANCE *by a Lessee and his Mortgagees to prevent the further Assignment of a* LEASE *without the License of the Lessor* (*a*).

THIS INDENTURE, made &c., BETWEEN A. B. and C. D., of &c., [*mortgagees*], of the first part; E. F., of &c., [*lessee*], of the second part; and G. H., of &c., [*lessor*], of the third part. [*Recital of the lease for a term of years from the ancestor of G. H. to E. F., setting forth a proviso, for re-entry in case of the assignment by the lessee without the license of the lessor.*] AND WHEREAS the reversion expectant on the said term of —— years in the premises comprised in the hereinbefore recited indenture is now vested in the said G. H., under and by virtue of the last will and testament, dated the —— day of ——, of [*the ancestor*], now deceased, and of an indenture of settlement bearing date the —— day of ——, and made or expressed to be made between [*parties*]:

Recital of the lease;

—of the reversion being now vested in the present owner;

Law relating to defeazances.

(*a*) A defeazance is said to be a collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions upon the performance of which the estate then created may be defeated or totally undone. 2 Bl. Com. 327. See, too, Shepp. Touchst. 396. This definition, however, applies in the full extent only to defeazances of deeds creating estates of freehold; for defeazances in respect of other deeds may well be made by deeds subsequently executed. Shepp. Touchst. Ib.; Prest. on Conveyancing, 199, 1st. Edit. Hence such a defeazance may be used for restoring a condition in a lease not to assign without license, when the original condition is gone by reason of a license to assign having been given. See ante, Vol. 3, p. 585, n. *c*.

It must be borne in mind, that every defeazance must be made by the same species of assurance as the thing to be defeated was created; so that, if the creation be by deed, the defeazance must be so likewise. Shepp. Touchst. 397.

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AND WHEREAS by an indenture bearing date the —— day of —— last, and made or expressed to be made between [*parties*], in consideration of the sum of £—— therein mentioned to be owing from the said E. F. to the said A. B. and C. D., the said E. F. did assign unto the said A. B. and C. D., their executors and administrators, the said messuage, buildings, closes, pieces or parcels of land, meadow and pasture, mines or beds of coal and ironstone, ways, waters, watercourses, easements, and appurtenances, powers, liberties, and authorities by the said indenture of the —— day of —— [*the lease*] demised, or expressed and intended so to be, to the said E. F., his executors, administrators, and assigns, for the said term of —— years, with their and every of their appurtenances, to hold, use, and enjoy the same unto and by the said A. B. and C. D., their executors, administrators, and assigns, (they nevertheless exercising the said powers, liberties, and authorities thereby assigned, only in the manner and subject to the provisions and restrictions mentioned and contained in the said indenture of the —— day of —— [*the lease*]), thenceforth for all the residue then to come of the said term of —— years, at, under, and subject to the rents, covenants, conditions, and agreements by and in the said indenture of the —— day of —— [*the lease*] reserved and contained, and which from the day of the date of the said indenture now in recital ought on the tenant or lessee's part to be paid, kept, observed, and performed; and subject also to the proviso or agreement in the said indenture now in recital contained for redemption of the same premises (together with other hereditaments and effects), upon payment by the said E. F., his executors, administrators, or assigns, to the said A. B. and C. D., their executors, administrators, or assigns, of the sum of £—— at the time therein mentioned, with interest for the same after the rate, on or at the days or times, and in manner therein mentioned: AND WHEREAS the hereinbefore recited assignment of the said term was made without the license or consent of the said G. H., and thereby a right of re-entry upon the said demised premises accrued to the said G. H. by virtue of or under the proviso or condition in that

—of the assignment of the lease by way of mortgage;

—that the assignment was without license, and thereby a right of re-entry accrued to the lessor;

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behalf contained in the said indenture of the —— day of —— [*the lease*]: AND WHEREAS, on the —— day of this instant month of ——, the said G. H., with a full knowledge of the breach of the condition contained in the said indenture of the —— day of —— [*the lease*], made by assigning the said leasehold premises without the license and consent of the lessor, his heirs or assigns, accepted payment from the said A. B. and C. D. of the sum of £——, as and for the half-yearly payment of the said yearly rent of £——, which fell due on the —— day of —— last, and thereby the right of re-entry on the said breach of the said condition was waived by the said G. H.: AND WHEREAS in order to induce the said G. H. to waive his right of re-entry by accepting rent which fell due after breach of the said condition, the said A. B. and C. D. agreed to grant unto the said G. H. and his assigns, or other the person or persons for the time being entitled under the limitations of the said indenture of settlement in remainder or reversion immediately expectant on the said term of —— years, such power or right of re-entry as is hereinafter granted and contained, and to enter into such covenants as are hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, it is hereby agreed and declared between and by the parties to these presents; and the said A. B. and C. D., with the consent and approbation of the said E. F., (testified by his being a party to and executing these presents), do, for themselves, their executors, administrators, and assigns, grant unto the said G. H. and his assigns, and other the person or persons who shall or may for the time being be entitled to the said demised messuage, lands, mines, and premises, in remainder or reversion, immediately expectant on the said term of —— years, that (*b*) in case the several yearly and other rents, royalties, and payments by the said

—that the lessor, by the acceptance of rent, has waived such right of re-entry;

—of the agreement to grant a new right of re-entry, and to enter into covenants.

Witnesseth grant to the lessor of a right of re-entry on any future assignment without his license, and on other events.

(*b*) The proviso in the defeazance must, in the absence of express stipulation to the contrary, be a copy (so far as circumstances admit) of the proviso for re-entry in the lease.

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indenture of the —— day of —— [*the lease*] reserved and made payable, or any of them, or any part thereof, shall be behind and unpaid for the space of thirty days next over or after any of the several days or times upon which the same respectively ought to be paid according to the true intent and meaning of the said last-mentioned indenture, being first demanded either at the time of the same becoming due respectively, or at any time afterwards, and not paid when demanded, and no sufficient distress or distresses can or may be found at, in, or upon the said demised messuage, lands, mines, and premises, or any part thereof, to answer and satisfy the same, and the costs and charges of making, detaining, and disposing of such distress or distresses; or in case the said A. B. and C. D., their executors, administrators, or assigns, shall grant, assign, exchange, set, let, demise, or part with the possession of the said demised messuage, lands, mines, and premises, or any part thereof, unto any person or persons whomsoever, without the express license and consent of the said G. H. or his assigns, or other the person or persons for the time being entitled as aforesaid, first had and obtained in writing under his or their hand or hands for that purpose; or if the said A. B. and C. D., their executors, administrators, or assigns, shall suffer the said demised messuage, lands, mines, and premises, or any part thereof, or the said lease, to be extended or taken in execution for any debt, cause, or thing whatsoever; or if the said A. B. and C. D., or either of them, their or either of their executors, administrators, or assigns, shall commit any act of bankruptcy within the meaning of any statute or statutes made or to be made in relation to bankrupts whereon a fiat of bankruptcy shall issue, and they or he shall be found and declared to be bankrupt, and such fiat shall not afterwards be annulled, vacated, abandoned, or superseded without delay, then and from thenceforth and in any of the said cases it shall be lawful for the said G. H. or his assigns, or other the person or persons so for the time being entitled as aforesaid (in case he or they shall be so minded), to enter into and upon the said demised messuage, lands, mines, and premises, or any part

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thereof in the name of the whole, and the same and every part thereof to have again, repossess, and enjoy as of his or their former estate, right, and interest; and from and after such re-entry, the term and estate by the said indenture of the —— day of —— [*the lease*] granted shall cease, determine, and be utterly void, except only as to remedies for arrears of rent and breaches of covenant: PROVIDED ALWAYS, and it is hereby expressly declared, that nothing in these presents, or in the said indenture of the —— day of —— last contained, shall be construed to authorize the said A. B. and C. D., their executors, administrators, or assigns, to re-assign the said mortgaged premises to the said E. F., his executors, administrators, or assigns, in pursuance of the proviso for redemption contained in the said indenture of the —— day of ——, without the express license and consent of the said G. H. or his assigns, or other the person or persons for the time being entitled as aforesaid, first had and obtained in writing under his or their hand or hands for that purpose: AND IN PURSUANCE of the aforesaid agreement in that behalf, and in consideration of the premises, the said A. B. and C. D. do for themselves, their heirs, executors, administrators, and assigns, and each of them doth for himself, his heirs, executors, administrators, and assigns, covenant with the said G. H., his heirs, executors, administrators, and assigns, that they the said A. B. and C. D., or one of them, their or one of their executors, administrators, or assigns, shall and will from time to time, and at all times hereafter during the continuance of the said term of —— years created by the said indenture of the —— day of —— [*the lease*], pay, keep, observe, and perform all and singular the rents, covenants, conditions, and agreements by and in the said indenture of the —— day of —— [*the lease*] reserved and contained, and which on the tenant or lessee's part ought to be paid, kept, observed, and performed: PROVIDED ALWAYS, and it is hereby expressly agreed and declared, that nothing herein contained shall in anywise prejudice or affect the proviso or condition for re-entry contained in the said indenture of lease of the —— day of —— [*the lease*]. IN WITNESS &c.

Proviso that the mortgagees are not to re-assign to the mortgagor without the license of the lessor.

Covenant by the mortgagees to pay the rent, and perform the covenants.

Proviso that the original condition of re-entry is not to be affected.

DEEDS OF DISCLAIMER.

Disclaimer of an estate may be made by a deed or any conduct amounting to a refusal to accept.

EVERY estate given by deed or will, or otherwise, is supposed primâ facie to be beneficial to the devisee; consequently, it is also supposed, until there is proof to the contrary, that every estate is accepted by the donee. But every donee is at liberty to refuse the gift, for the law will not, of course, compel a man to take an estate against his will. Shepp. Touchst. 285, 318. *Bonifaut* v. *Greenfield*, Cro. Eliz. 80; S. C., Godb. 77; *Smith* v. *Wheeler*, 1 Ventr. 128; S. C., 2 Keb. 772; 1 Leon. 60; *Thomson* v. *Leach*, 2 Ventr. 198; *Hawkins* v. *Kemp*, 3 East, 410; *Denn* v. *Judge*, 11 East, 288; *Townson* v. *Tickell*, 3 B. & Ald. 31. It seems to have been long ago settled by the early cases referred to, that, in regard to leaseholds and copyholds, (cases in which the freehold was not in question), the simple dissent of the donee was sufficient to avoid the gift; but, in the case of *Townson* v. *Tickell*, 3 B. & Ald. 31, it was contended, that, where the freehold was in question, a dissent or disclaimer could be made only in a court by matter of record. That case, however, decided that a renunciation by deed, under the hand and seal of the donee, had the effect of making the gift void; (see, too, *Begbie* v. *Crook*, 2 Bing. N. C. 70); and in the case of *Stacey* v. *Elph*, 1 My. & Kee. 195, it was laid down by Sir John Leach, M. R., that although it is most prudent that a deed of disclaimer should be executed by a donee who refuses to accept the estate given him, (because such deed is clear evidence of the disclaimer, and admits of no ambiguity), yet that there may be *conduct* on the part of the donee which amounts to a clear disclaimer.

Operation of disclaimer.

Considerable difficulty on the subject of disclaimer appears to have been felt by Lord Eldon, in the case of *Nicolson* v. *Wordsworth*, 2 Swanst. 365:—"I understand," said his Lordship, "the operation of a release with intent to disclaim, but it is difficult to know what that thing called a disclaimer is." This difficulty, however, does not seem to be felt by conveyancers or courts at the present day. The fact is, that a disclaimer has no operation at all; it is only a convenient mode of preserving evidence that the donee has refused the gift, and may be testified as well, though not as conveniently for title, by an answer in Chancery, or any other act, conduct, or expression of the donee indicating an unequivocal refusal of the gift. *Stacey* v. *Elph*, 1 My. & Kee. 195; *Urch* v. *Walker*, 3 My. & Kee. 702; *Townson* v. *Tickell*, 3 B. & Ald. 31.

Form of disclaimer.

The form of disclaimer by deed, however, is of importance, in so far that it must be a simple disclaimer, and not a conveyance or release of the estate, which could only be made on the supposition that the donee had accepted the estate. Thus, where one trustee meaning to disclaim released to his co-trustee, it was held that this was not a disclaimer, but an acceptance of the trust followed by a conveyance of the estate; *Crewe* v. *Dicken*, 4 Ves. 97; and the authority of that decision cannot be deemed to be shaken by the observations of Lord Eldon in *Nicolson* v. *Wordsworth*, 2 Swanst. 365, or by the decree in that case, which was taken by consent. See the remarks of Lord Cottenham in *Urch* v. *Walker*, 3 My. & Kee. 708-710. See, too, the distinction between a disclaimer and surrender in *Doe* d. *Wyatt* v. *Hogg*, 5 Bing. N. C. 564. For this reason the effect of Precedent 82, infra, is doubtful, although it was recently framed, and that by an eminent conveyancer; but it may derive some support from the case of *Adams* v. *Taunton*, 5 Madd. 435. Precedent 81, infra, is the ordinary and unexceptionable form.

General effect of disclaimer by one of several trustees, and by a sole trustee.

A disclaimer is, of course, seldom made by a donee taking for his own benefit, but generally by a person taking as trustee. If the person disclaiming be one of two or more trustees, the estate is vested in the other trustee or trustees, as though the person disclaiming had never been named as a trustee. *Townson* v. *Tickell*, 3 B. & Ad. 31; *Begbie* v. *Crook*, 2 Bing. N. C. 70. And it is apprehended to be clear, that, even if no disclaimer were executed till after the death of the acting trustee or trustees, the estate would be vested in the heir or devisee of the deceased trustee, or of the longest liver of the deceased trustees, exactly as though the person disclaiming had never been named as a trustee. For it is of no moment at what time evidence of the disclaimer is committed to writing—the actual disclaimer or refusal of the estate will be held to have been made at the time of the gift, if the disclaiming party has never done any act inconsistent with a refusal of the estate. If the disclaiming party be a sole trustee, the freehold and copyhold estate will vest in the heir; *Stacey* v. *Elph*, 1 My. & Kee. 195; and in the case of copyholds, it is immaterial that the disclaimer is made to defeat the lord's right to fines. *The King* v. *Wilson*, 10 B. & C. 80.

Effect on the powers of the trustees or trustee.

In the case of *Adams* v. *Taunton*, 5 Madd. 435, it was held by Sir John Leach, V. C., that, where there is a devise to trustees with power to give receipts, the trustees who accept the trust can give a valid receipt; and, although the propriety of the decision has been questioned by conveyancers, there can be no doubt that it is according to the true principles of disclaimer. For after a disclaimer by any party, the instrument giving the estate is to be read as though the name of that party, and every expression connected with it, had been originally omitted from the instrument; which, applied to the power to give receipts, or to any other power, will shew that the acting trustee or trustees may exercise the power exactly as if it had been given in words to him or them only. See *Eaton* v. *Smith*, 2 Beav. 236.

LXXXI.

DISCLAIMER *by a Person named in a Will as* TRUSTEE *and* EXECUTOR, *and* GUARDIAN *of th Testator's Children* (*a*). DISCLAIMER.

TO ALL TO WHOM these presents shall come, E. F., of &c., sendeth greeting. [*Recital of the will of A. B., stating briefly all the devises of the freeholds and bequests of leaseholds and personalty to the trustees; shewing, in each case where an investment is directed, the trust for that purpose; stating also the devise of trust and mortgage estates to the trustees, and the appointment of the executors and the guardians of the testator's children.*] AND WHEREAS the said A. B. died on the —— day of —— without having in anywise revoked or altered his said will, and the same was proved by —— [*the other executors*] on the —— day of ——, in the —— court of ——, the said E. F. having first duly renounced probate of the same: AND WHEREAS the said E. F. has in nowise administered to the estate of the said testator, and has in nowise acted or interfered in the execution of the trusts of the said will or any of them, or as guardian of the children of the said testator, and has declined to administer to the estate of the said testator, or to act or interfere in the execution of the trusts of the said will, or as guardian of the said children. NOW THESE PRESENTS WITNESS, that he, the said E. F., hath renounced and disclaimed (*b*), and by these presents doth renounce and disclaim, All and singular the

Recital of a will;

—of the death of the testator, and the probate of his will;

—that the disclaiming trustee has not acted.

Witnesseth disclaimer.

(*a*) This is the ordinary form of disclaimer, see the last note.

(*b*) As a deed of disclaimer is evidence that the disclaiming party has refused an estate or office, as well as that he persists in his refusal, (see the note in the last page), the use of both the past and present tenses seems to be appropriate.

Use of past tense in the operative words of a deed of disclaimer.

DISCLAIMER.

said freehold and leasehold messuages, lands, tenements, and hereditaments, and the said diamonds, plate, goods, pictures, prints, curiosities, books, glasses, china, linen, and furniture, and all and singular other the real and personal estate and effects whatsoever given, devised, or bequeathed by the said will, and all devises, bequests, and legacies, and benefits expressed to be made or given to him by the said will, and also the said offices of trustee and executor of the said will, and guardian of the children of the said testator, and all and singular trusts, powers, authorities, rights, and privileges whatsoever under the said will. IN WITNESS &c.

LXXXII.

DISCLAIMER AND CONVEYANCE.

DISCLAIMER *by* INDORSEMENT *on a Settlement by a* TRUSTEE, *who in the* SAME DEED *makes a* CONVEYANCE *of the* TRUST ESTATE (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN the within-named E. F., now of &c., [*a retiring trustee*], of the first part; the within-named C. D., now C. B., of &c., [*the tenant for life*], of the second part; the within-named G. H., [*the disclaiming trustee*], of the third part; and I. K. and L. M., (the parties to the indenture indorsed on the —— skin of the within-written indenture), [*the new trustees who*

Operation of a deed of disclaimer and conveyance.

(*a*) It is questionable, whether a deed of this form, embracing both a disclaimer and a conveyance, will operate as a disclaimer. See *Crewe* v. *Dicken*, 4 Ves. 97; *Urch* v. *Walker*, 3 My. & Kee. 702; and supra, p. 608, n. The Precedent is given, because it was recently framed by an eminent conveyancer, (in a case in which a conveyance was insisted on), with a view, as far as possible, to obviate the objection referred to; but is not to be employed, except upon occasions when this form is insisted upon by the other parties, and the disclaiming party, being apprised of the question which may arise, expressly agrees to convey. No counsel ought to advise his client to execute more than a simple disclaimer.

DISCLAIMER AND CONVEYANCE.

had been appointed by the indenture referred to], of the fourth part: WHEREAS a marriage was duly had and solemnized between the within-named A. B. and the said C. B. shortly after the day of the date of the within-written indenture: AND WHEREAS the said A. B. died on or about the —— day of ——: AND WHEREAS the said G. H. hath not executed the within-written indenture, or in any manner acted as a trustee appointed thereby, or accepted the trusts for the performance of which it was intended that he should be appointed a trustee; and has refused, and still wholly refuses to be such trustee, or to act in or to accept such trusts: AND WHEREAS the said G. H. having declined to act as such trustee as aforesaid, and the said E. F., being desirous of being discharged from being a trustee under the within-written indenture, the said indentures of the —— and —— days of —— [*indorsed deeds*] were prepared by the direction of the said E. F., who directed that the said G. H. should be made a party to the said —— indenture of ——, [*first indorsed deed*], for the satisfaction of the parties who are or may hereafter be interested in the lands and hereditaments expressed to be thereby released and assigned, or any part thereof, and not by way of acknowledgment or admission of his having accepted the trusts of the within-written indenture, or of any estate, right, title, or interest of him the said G. H., therein: AND WHEREAS the said G. H. has refused to execute the said indenture of the —— day of ——, having been advised that he ought to require that any conveyance executed by him should contain an express disclaimer by him, and should expressly provide against its amounting to, or being considered as evidence of his having accepted the office of trustee under the within-written indenture, and that the said indenture of the —— day of ——, or some of the statements therein contained, might be deemed an acceptance of the office of trustee, or evidence of his having accepted such office: AND WHEREAS, in order that a conveyance may be obtained from the said G. H. of the said lands and other hereditaments, for the satisfaction of the parties who are or may hereafter be interested therein, and that

Recital of the solemnization of the marriage;

—of the death of the husband;

— of one trustee not having executed the settlement, and having refused to act;

—of new trustees having been appointed in his place, and the place of his co-trustee, who retires;

—of the disclaiming trustee having refused to execute, though made a party to the deeds appointing the new trustees;

—of the motive for executing the present deed.

DISCLAIMER AND CONVEYANCE.

such conveyance may not amount to such acknowledgment or admission as aforesaid, these presents have been prepared, and are intended to be executed. NOW THIS INDENTURE WITNESSETH, that the said G. H. doth wholly and utterly disclaim and renounce (*b*) all estate, right, interest, claim, and demand whatsoever, in or to the lands and other hereditaments released and assigned by the within-written indenture, and all trusts, powers, and authorities intended to be reposed in or given to him by the within-written indenture: AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, he the said G. H., with the consent and approbation of the said C. B., (testified by her sealing and delivering these presents), and for the satisfaction of the parties who are, or who may be, interested in the same hereditaments, but not by way of acknowledgment or admission of his having accepted the trusts of the within-written indenture, or of any estate, right, title, interest, claim, or demand whatsoever, in, to, out of, or upon all or any of the same hereditaments, doth by these presents, (made in pursuance &c., *see supra, p.* 266), release unto the said I. K. and L. M., their heirs and assigns, ALL THAT the within-mentioned freehold piece of land situate in ——, in the within-written indenture more particularly described; AND ALSO all that the within-mentioned piece of land, with the two warehouses, situate in ——, in the within-written indenture more particularly described, (but subject to the exception therein mentioned), TOGETHER with all rights, easements, and appurtenances to the said pieces of land, warehouses, hereditaments, and premises respectively, or any of them, belonging, or in anywise appertaining, AND ALL THE ESTATE, &c., TO HAVE AND TO HOLD the said pieces of land, warehouses, and hereditaments, and all and singular other the premises hereinbefore released, or expressed and intended so to be, unto the said I. K. and L. M., their heirs and assigns, TO THE USE of the said I. K. and L. M., their heirs and assigns, UPON

Witnesseth disclaimer and renunciation by the trustee.

Witnesseth further, release and assignment by the same trustee to the new trustees of the trust estate.

Parcels.

Habendum to the new trustees on the subsisting trusts.

(*b*) See supra, p. 609, n. *b*.

DISCLAIMER AND CONVEYANCE.

AND FOR such of the trusts, intents, and purposes, and with, under, and subject to such of the powers, provisoes, agreements, and declarations by and in the within-written indenture declared and contained concerning the same, as are now subsisting or capable of taking effect. [*Covenant by G. H. with I. K. and L. M. against incumbrances, see ante, Vol. 3, p. 249.*] IN WITNESS &c.

Covenant.

LXXXIII.

APPOINTMENT TO A CHILD OF A SHARE OF A SUM OF MONEY.

APPOINTMENT (*under a Power in a Marriage Settlement to appoint among Children*) *of a* SHARE *in* SUMS *of* MONEY.

TO ALL TO WHOM these presents shall come, C. B., of &c., widow of A. B., late of &c., deceased, sends greeting. [*Recital of settlement, whereby certain sums of money were settled on marriage, for the husband and wife successively for life, and, after the death of the survivor, as they or the survivor should in manner specified appoint, with trusts over in default of appointment, and a hotchpot clause* (*a*)*—of the death of the husband—of there being —— children of the marriage, of whom D. B., now of the age of —— years or thereabouts, is one—and of the present state of the investment of the trust funds.*] NOW THESE PRESENTS WITNESS, that, pursuant to, and by force and virtue, and in exercise and execution of the power or authority by the said indenture of settlement given or

Recital of a marriage settlement, and subsequent facts shewing the power to appoint.

Witness, appointment under a power in the settlement to a child of a share of the settled funds.

(*a*) In instruments by which it is intended to exercise a power of appointment, the creation of the power should be recited verbatim; see ante, Vol. 3, p. 210, n. *d*, p. 211, n. *e*. It is proper also, in the present case, to give the trusts in default of appointment, and the hotchpot clause, to shew that it is unnecessary to insert a provision as to hotchpot in the present deed. If the instrument creating the power contains no hotchpot clause, provision must be made as to that point in the deed of appointment. See ante, Vol. 4, p. 319, n. *k*.

Recitals in appointments.

APPOINTMENT TO A CHILD OF A SHARE OF A SUM OF MONEY.

reserved to the survivor of the said A. B. and C. B., as hereinbefore is mentioned, and of every or any other power or authority the said C. B. in anywise enabling in this behalf, she the said C. B. doth, by this present deed or instrument in writing, sealed or delivered by her in the presence of and attested by two credible witnesses, whose names are intended to be hereupon indorsed as witnesses to the sealing and delivery of these presents, direct and appoint (*b*), that one equal third part of and in the said several sums of £——, £——, and £——, and the stocks, funds, or securities in or upon which the same respectively are or shall be laid out or invested, shall, from and after the decease of the said C. B., go to and be in trust for the said D. B., her executors, administrators, and assigns. IN WITNESS &c. (*c*).

(*b*) The form of the appointment will of course be regulated by the terms of the powers; see ante, Vol. 3, p. 211, n. *e*.

(*c*) See the form of a conditional appointment made in contemplation of marriage, ante, Vol. 4, p. 330.

LXXXIV.

CONFIRMATION OF APPOINTMENT AND RELEASE OF POWER.

CONFIRMATION (*by the Person entitled in Default of Appointment*) *of a* DOUBTFUL APPOINTMENT *of a Share in a Sum of Money directed to be raised under the Trusts of a Term of Years.* RELEASE *of the* POWER *of* APPOINTMENT.

Parties.

THIS INDENTURE, made &c., BETWEEN E. B., of &c., [*the person entitled in default of appointment*], of the first part; C. B., of &c., widow, [*the donee of the power*], of the second part; and D. B., of &c., [*the person entitled under the appointment*], of the third part. [*Recital of a settlement on the marriage of A. B. and C. B., limiting a term to trustees for raising £12,000 for the portions of younger children of the marriage, to be raised after the decease of*

Recital of a marriage settlement providing a sum for portions of

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the survivor of A. B. and C. B., or sooner, if they or the survivor of them should so direct, and to be divided between such younger children as the parents or the survivor should appoint; and, in default of appointment, to them equally, but without any hotchpot clause—that there was issue two sons and one daughter, viz. the said D. B. (the eldest son), the said E. B. (the second son), and G. B. or G. F., who afterwards intermarried with H. F.]: AND WHEREAS, by an indenture bearing date the —— day of ——, and made or expressed to be made between [*parties*], after reciting, among other things, that the said G. F. had attained the age of twenty-one years, for the considerations therein mentioned the said G. F. did assign unto the said A. B., his executors, administrators, and assigns, All that sum of £6000 sterling, being the portion or share of her the said G. F. of and in the said sum of £12,000, to be raised and levied under the trusts of the said term of —— years created by the said indenture of release and settlement of the —— day of —— as aforesaid, being one equal moiety or half part of the same, of and in which she the said G. F., on her attaining the age of twenty-one years, had acquired a vested interest, subject to the same being divested by any exercise of the powers of appointment relative to the same fund by the same indenture of release and settlement given or limited to the said A. B. and C. B. and to the survivor of them, and all interest which should or might at any time or times accrue or become payable in respect of the said portion or sum of £6000, To hold the same, (subject as aforesaid), unto the said A. B., his executors, administrators, and assigns: AND WHEREAS, by an indenture bearing date the —— day of ——, and made or expressed to be made between [*parties*], (being a settlement made previously to and in consideration of the marriage then intended, and shortly after had and solemnized between the said E. B. and ——), after reciting (among other things) to the effect hereinbefore recited, and after reciting that upon the treaty for the said marriage it was agreed (amongst other things) that the said A. B. and C. B. should appoint the sum of £6000, being the moiety remaining unappointed

younger children of the marriage; and of there being two younger children only;

—of the assignment, by one of the younger children, of the moiety to which she was entitled in default of appointment of the sum provided for portions;

—of the appointment of the other moiety to the other younger child, treating the first moiety as appropriated;

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or unappropriated of the said sum of £12,000 provided for portions as aforesaid, to the said E. B. or as he should direct, and that the said E. B. was desirous that the same should be appointed to the said [*trustees*] upon the trusts thereinafter mentioned or referred to: it was witnessed, that, in consideration of the said then intended marriage, the said A. B. and C. D., in exercise of the said power in that behalf given to them by the said indenture of the —— day of ——, at the request and by the direction and on the nomination and appointment of the said E. B. (testified as therein mentioned), did irrevocably direct and appoint, and the said E. B. did thereby order, direct, assign, and appoint that the sum of £6000, the remaining unappointed or unappropriated part of the said sum of £12,000, should be and remain to the use of the said [*trustees*], their executors, administrators, and assigns absolutely, and be an interest absolutely vested in them, or in the said E. B. on their behalf, on or immediately after the execution of the said indenture now in recital, and be payable to them immediately on or after the decease of the survivor of them the said A. B. and C. B., and be raised and paid by the said ——, the then trustees of the said term of —— years, or other the trustee or trustees for the time being of the same term, so soon as conveniently might be after the decease of such survivor, Together with interest at £4 per cent. per annum, from the decease of such survivor; And it was thereby declared and agreed, and particularly the said C. B. did thereby direct and appoint, That the said [*trustees*], and the survivors and survivor of them, and the executors and administrators of such survivor, should stand and be possessed of the said sum of £6000, which had been so appointed or made payable to them as aforesaid, and the interest thereof, upon the trusts therein mentioned or referred to: AND WHEREAS the said A. B. duly made, signed, and published his last will and testament in writing, bearing date the —— day of ——, and thereby, after certain devises and bequests not affecting the said portion or sum of £6000 assigned to him by the said indenture of the —— day of ——, or expressed and intended so to be, gave and be-

—of the will of the assignee of the first moiety;

queathed all the residue of his personal estate not therein- CONFIRMATION OF APPOINTMENT AND RELEASE OF POWER.
before specifically or otherwise disposed of unto the said D. B. and E. B,, their respective executors, administrators, and assigns, in equal moieties, share and share alike; and the said testator thereby appointed the said C. B., D. B., and E. B. joint executrix and executors of his said will: AND WHEREAS the said A. B. died on the —— day of ——, —of his death, and the probate of his will; without having revoked or altered his said will, (except so far as the same was altered by three codicils thereto, which did not affect the said sum of £6000 assigned to the said A. B. as hereinbefore is mentioned); and the same will, with the three codicils thereto was proved in the Prerogative Court of the Archbishop of Canterbury on or about the —— day of —— by the said D. B. and E. B.: AND —of the death of the assignor of the same moiety; WHEREAS the said G. F. died on the —— day of ——: AND WHEREAS no further appointment hath been made of the said sum of £12,000, or any part thereof, than appears —that no further appointment has been made of such moiety; by the hereinbefore recited indenture of the —— day of ——: AND WHEREAS it is apprehended, that if the said sum of £6000, assigned or expressed to be assigned by the —of the present claims to the unappointed moiety; said G. F. to the said A. B. in and by the hereinbefore recited indenture of the —— day of ——, was not by the effect of the hereinbefore recited indenture of the —— day of —— appointed as and for the share of the said G. F. of and in the said sum of £12,000, provided for portions under the trusts of the said term of —— years, the same sum of £6000 as the unappointed part of the said sum of £12,000 is now vested as to one moiety in the said E. B. in his own right; and as to the other moiety, in the said D. B. and the said E. B., as legatees of the said A. B., assignee of the said G. F. as aforesaid, in equal shares, but subject as to the same moieties respectively to be divested by any exercise by the said C. B. of the power of appointment vested in her under the said indenture of the —— day of —— [*the original settlement*] as the survivor of them the said A. B. and C. B. (*a*): AND WHEREAS the said E. B. —of the agree

(*a*) As to what amounts to a good execution of a power, see 1 Sugd. Pow. Ch. VI, particularly sects. 2 & 7.

CONFIRMATION OF APPOINTMENT AND RELEASE OF POWER.

and D. B. being satisfied that, at the time of the execution of the hereinbefore recited indenture of the —— day of ——, it was considered by the said A. B. and C. B., that the sum of £6000 had been, and then was duly appointed and appropriated as and for the share of the said G. F. of and in the said sum of £12,000, and that it was their intention that the said sum of £6000 should belong absolutely to the said A. B., as such assignee of the said G. F. as aforesaid, he, the said E. B., hath agreed to relinquish and assign unto the said D. B. all his right or interest to or in the sum of £1500, part of the one moiety, which, if the said last mentioned sum of £6000 is considered to remain unappointed, is now vested in him in his own right of and in the same sum of £6000; AND THE SAID C. B. hath agreed to release and extinguish the power of appointment, which, if the said last-mentioned sum of £6000 is considered to remain unappointed, is now vested in her as to the same sum, but without prejudice to her power of directing the same sum of £6000, or any part or parts thereof, to be raised and paid at any time or times during her life. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, and of the natural love and affection which the said E. B. bears towards the said D. B., he, the said E. B., doth by these presents, assign, release, and quit claim unto the said D. B., his executors, administrators, and assigns, ALL THAT the sum of £1500, part of the moiety, which (if the sum of £6000, part of the said sum of £12,000, provided to be raised under the trusts of the said term of —— years, is unappointed) is now vested in him the said E. B. in his own right of the same sum of £6000, and all interest to become due for the same sum of £1500: AND ALL THE ESTATE, &c., TO HAVE, HOLD, RECEIVE, AND TAKE the said sum of £1500, and all interest to become due for the same, and all and singular other the premises hereinbefore assigned and released, or expressed and intended so to be, unto the said D. B., his executors, administrators, and assigns, for his and their own use and benefit. [*Covenant by E. B. with D. B., his executors,*

ment to give effect to the doubtful appointment;

—and to release the power.

Witnesseth assignment of the unappointed interest to the representative of the former assignee thereof.

Habendum to the assignee for his own benefit.

administrators, and assigns, against incumbrances, ante, Vol. 3, p. 241, and supra, p. 283]. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, and for divers other good causes and considerations the said C. B. hereunto moving, she, the said C. B., with the consent of the said E. B., (testified by his being a party to and executing these presents), doth acquit, release, and discharge the said moiety assigned, or expressed to be assigned, in and by the said indenture of the —— day of ——, and not by the hereinbefore recited indenture of the —— day of ——, expressly appointed as aforesaid, of and in the said sum of £12,000, provided to be raised under the trusts of the said term of —— years, from the power of appointment, which, if the same moiety is unappointed, is now vested in her, the said C. B., under the said indenture of the —— day of ——, [*the original settlement*], as the survivor of them, the said A. B. and C. B., as to, or concerning such moiety of and in the said sum of £12,000, To THE END that the same power may be absolutely extinguished, and she, the said C. B., may be barred and absolutely excluded from exercising the same: PROVIDED ALWAYS, and it is hereby expressly agreed and declared, that nothing hereinbefore contained shall in anywise prejudice or affect the power vested in the said C. B. under the said indenture of the —— day of ——, [*the original settlement*], of directing the said sum of £6000, assigned or expressed to be assigned by the said indenture of the —— day of ——, and not by the said indenture of the —— day of —— expressly appointed as aforesaid, or any part or parts thereof, to be raised and paid at any time or times during the life of the said C. B. IN WITNESS &c.

CONFIRMATION OF APPOINTMENT AND RELEASE OF POWER.

Witnesseth further, release of the power.

Proviso that the donee shall not be precluded from directing the portions to be raised in her lifetime.

LXXXV.

DIRECTION THAT PORTIONS SHALL BE RAISED IN THE LIFETIME OF A PARENT.

DIRECTION *by the Survivor of Husband and Wife, in pursuance of a Power contained in a Settlement, that Part of a* SUM *directed to be raised for* YOUNGER CHILDREN'S PORTIONS *after the Decease of the Survivor of Husband and Wife, shall be* RAISED IMMEDIATELY.

(*To be endorsed on the last Deed*).

Deed-poll by the survivor of the parents, directing that the portion of a younger child shall be immediately raised.

TO ALL TO WHOM these presents shall come, the within-named C. B. sendeth greeting. KNOW ALL MEN by these presents, that, pursuant to, and by force and virtue, and in exercise and execution of the power or authority for this purpose vested in her, the said C. B., as in the within-written indenture is mentioned, and of every or any other power or authority in anywise enabling her in this behalf, she, the said C. B., doth, by this present deed or writing, under her hand and seal, attested by the two credible persons, whose names are intended to be hereunder written, as witnesses to the signing, sealing, and delivery of these presents, direct and appoint (*a*) that the within-named [*trustees*], their executors, administrators, and assigns, or other the trustee or trustees of the within-mentioned term of —— years, do and shall immediately, or as soon as may be, after the execution of these presents, by all or some, or one of the ways and means in that behalf authorized in and by the within-recited indenture of the —— day of ——, levy and raise the sum of £3000, to which the within-named D. B. hath become entitled, by virtue of, or under the within-recited indenture of the —— day of ——, the with-

(*a*) See supra, p. 614, n. *b*.

in recited will of the within-named A. B., and the within-written indenture, or some or one of them, unto the said D. B., his executors, administrators, or assigns, for his or their proper use or benefit. IN WITNESS &c. (*b*).

DIRECTION THAT PORTIONS SHALL BE RAISED IN THE LIFETIME OF A PARENT.

(*b*) See, ante Vol. 4, p. 519, n. *u*.

LXXXVI.

DEED *of* REQUEST *to* TRUSTEES *to* SELL SETTLED ESTATES, *under a* POWER *of* SALE, *which is to be exercised upon* REQUEST (*a*).

REQUEST TO TRUSTEES TO SELL.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of &c., sendeth greeting. WHEREAS, by indentures of lease and release, bearing date respectively the —— and —— days of ——, the release being made, or expressed to be made between [*parties*], (being a settlement made previously to and in consideration of the marriage then intended, and shortly afterwards had and solemnized between the said A. B., and the said ——), the manors of ——, the advowson of the rectory or parish church of ——, a capital messuage or mansion house, called ——, and divers farms, lands, woods, hereditaments

Recital of the settlement;

(*a*) When the consent or request of a tenant for life, or other person, is required to the exercise of a power in a settlement, such consent is in common cases given cotemporaneously with the exercise of the power, and by the same instrument. See ante, Vol. 3, p. 225.

But a question is sometimes made, whether the consent or request should not be given by a previous instrument, especially to the exercise of powers which, by the words "first had and obtained," or the like, appear to point to a previous consent or request. The cases bearing on the question are collected in Chance on Pow. ch. 8, arts. 732—742; Ib. Suppl. p. 32, citing the recent cases of *Greenham* v. *Gibbeson*, 10 Bing. 363; *Rex* v. *Daire*, 6 Ad. & Ell. 374. See, too, 1 Sugd. Pow. 334, 341, 6th edit.

Request or consent to the exercise of a power sometimes given by a deed executed previously to the exercise of the power.

REQUEST TO TRUSTEES TO SELL.

and premises in the several parishes of ——, or elsewhere, in the county of ——, in the said indentures particularly described, with the appurtenances, were conveyed and assured, and by the said indenture of release, limited to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations, in and by the said indenture of release, declared, expressed, and contained, of and concerning the same; And it was in and by the said indenture of release provided, that it should be lawful for the said E. F. and G. H., or the survivor of them, or the heirs and assigns of such survivor, at any time or times thereafter, during the life of the said A. B., at his request, testified by some writing, under his hand and seal, attested by two or more credible witnesses, and at such request, and so testified, the said E. F. and G. H., and the survivor of them, or the heirs and assigns of such survivor, were not only thereby authorized and empowered, but enjoined and required to dispose of and convey either by way of absolute sale, or in exchange for, or in lieu of other manors, lands and hereditaments, to be situate as therein mentioned, all or any part of the said manors or lordships, advowson, farms and hereditaments, thereby released, or expressed and intended so to be, and the inheritance thereof in fee-simple, to any person or persons whomsoever, for such price or prices in money, or for such an equivalent or recompense in manors, lands, and hereditaments, as to them, the said E. F. and G. H., or the survivor of them, or the heirs or assigns of such survivor should seem reasonable; and that, for the purpose of effecting such dispositions, it should be lawful for the said E. F. and G. H., or the survivor of them, or the heirs or assigns of such survivor, at such request, and so testified as aforesaid, and they were thereby not only authorized and empowered, but required by some deed, to be executed as therein mentioned, absolutely to revoke, determine, and make void, every or any of the uses, trusts, powers, and provisoes thereinbefore limited, declared, and expressed, of and concerning the said manors or lordships, advowsons, farms, hereditaments, and pre-

REQUEST TO TRUSTEES TO SELL.

mises, or any part or parts thereof; and to make, do, and execute all such acts and assurances whatsoever, as might be thought necessary or expedient, in order to effect such sales, dispositions, or conveyances as aforesaid: AND WHEREAS the said E. F. died in the month of ——, 18—: AND WHEREAS an offer has been made by I. K., of &c., for the purchase of the said manors or lordships, advowson, capital, messuage, farms, lands and hereditaments comprised in the said indentures of the —— and —— days of ——, (subject to the present subsisting leases of the same hereditaments respectively), at the price or sum of £——, and in the opinion and judgment of him the said A. B., and of competent persons whom he has consulted in that behalf, it would be highly advantageous for the persons beneficially interested under the said indenture of release that such offer should be accepted, and the said A. B. is therefore desirous that the same hereditaments should accordingly be sold to the said I. K. at the price aforesaid (*b*). NOW THESE PRESENTS WITNESS, that, for effectuating the said desire, He, the said A. B., doth by this writing under his hand and seal, attested by the two credible persons whose names are intended to be hereupon indorsed as witnesses attesting the execution of these presents by him the said A. B. (*c*), request the said G. H. forthwith to dispose of and convey, by way of absolute sale, all and singular the said manors or lordships, advowson, capital messuage, farms, lands, and hereditaments comprised in the said indentures of the —— and —— days of ——, with the rights, easements, appurtenances, and the inheritance thereof in fee-simple, (subject to the several leases now subsisting of the same respectively), unto the said I. K., or such person or persons as he may appoint,

—of the death of one of the trustees;

—of an offer having been made to purchase the estate;

Witness, request to the surviving trustee to sell

(*b*) The consent or request should point to a specific sale, as there is a question whether a general prospective request, or consent, is sufficient. See Chance on Pow. ch. 8, arts. 733, 735; 1 Sugd. Pow. 339, 6th ed.

Consent to the exercise of a power should be specific.

(*c*) The consent or request is of course to be given in the manner required by the power. See Chance on Pow. ch. 8, arts. 743, 744; 1 Sugd. Pow. 338, 339, 6th edit.

REQUEST TO TRUSTEES TO SELL.

—and convey to the purchaser.

and either altogether in one lot or in several lots, at the option of the said I. K., at or for the aforesaid price or sum of £—— for the whole: AND FOR THE PURPOSE of effecting such sale, disposition, or conveyance, absolutely to revoke, determine, and make void, all and every, or any of the uses, trusts, powers, and provisoes in or by the said indenture of release limited, declared, and expressed of and concerning the said manors or lordships, advowson, farms, lands, hereditaments, and premises, and every or any part thereof (*d*); And also to make, do, and execute all such deeds, acts, and assurances whatsoever as may be, or be deemed, or thought necessary, or expedient, in order to effect such sale, disposition, and conveyance of the same hereditaments to the said I. K., or to such person or persons, and in such shares or parcels as he may appoint, as aforesaid. IN WITNESS &c.

(*d*) The request to revoke the old, or limit new uses, should only be added when a request is made necessary for that purpose. Usually and properly, the request or consent is required only for the sale or exchange, not for the conveyance or deed by which it is to be effectuated.

LXXXVII.

DECLARATION OF TRUST OF TRUST-MONEY LENT ON MORTGAGE.

MEMORANDUM *by the Trustees of a* SETTLEMENT (*by* INDORSEMENT *on the Settlement*), *that a* SUM *of* MONEY, *forming Part of the settled Funds, has been Lent on* MORTGAGE.

BE IT REMEMBERED, that the sum of £——, the trusts whereof are declared in and by the above-written indenture of the —— day of —— (*a*), by reference to the within

Variation, where the sum

(*a*) In this case, the fund had been settled by a deed indorsed on the original settlement, and consisted of a sum of money.

If

written indenture, has been advanced and lent by the above-named E. F., L. M., and I. K. to the above-named A. B., and that the repayment thereof, with interest for the same in the mean time, at the rate of £—— per cent. per annum, has been secured by the covenant of the said A. B., contained in an indenture bearing even date with these presents, and made or expressed to be made between [*parties*], and by a mortgage made by the same indenture to the said E. F., L. M., and I. K., of certain freehold messuages therein described, and situate at ——, in the county of ——. IN WITNESS &c. (*b*).

DECLARATION OF TRUST OF TRUST-MONEY LENT ON MORTGAGE.

If the fund had been stock settled, the expression might have been

["that the sum of £——, £—— per cent. —— Bank Annuities, part of the within-mentioned, (*or* above-mentioned), sum of £—— like annuities was on the —— day of —— sold, and the sum of £——, the net money arising from such sale, advanced and lent &c.]

lent has been produced by the sale of stock.

(*b*) See the declaration of trust in the next Precedent. The execution of a memorandum serves the same purpose as, and is less expensive than a declaration of trust by deed. The only thing really done in either case, is to identify the money lent on mortgage as part of the trust fund. The same observation is equally applicable to declarations of trust of stock purchased with trust-monies, and to all similar cases in which the only object is to procure evidence that a particular fund is subject to particular trusts.

Memorandum of investment of trust-monies serves the same purpose as a formal declaration of trust.

LXXXVIII.

DECLARATION *of* TRUST *by Executors of a Will of* STOCK *purchased to provide for the Payment of a* CONTINGENT LEGACY (*a*).

DECLARATION OF TRUST OF A CONTINGENT LEGACY.

TO ALL TO WHOM these presents shall come, A. B., of &c., and C. D., of &c., severally send greeting. [*Recital*

Recital of will, &c.;

(*a*) See supra, n. *b*.

DECLARATION OF TRUST OF A CONTINGENT LEGACY.

of a will bequeathing a contingent legacy—of the testator's death, and the probate of his will, and of facts shewing that the legacy is still contingent.] AND WHEREAS, on the —— day of ——, the said A. B. and C. D. laid out the sum of £—— out of the personal estate of the said testator in the purchase of £—— £3 per cent. Consolidated Bank Annuities, in the names of the said A. B. and C. D.: AND WHEREAS the dividends of the said sum of £—— £3 per cent. Consolidated Bank Annuites have, since the purchase thereof, been accumulated by the investment of the same, and of the resulting income thereof, in the names of the said A. B. and C. D., in the purchase of like bank annuities, in the names of the said A. B. and C. D., and the original fund and the accumulations thereof now consist of the sum of £—— £3 per cent. Consolidated Bank Annuities. NOW THESE PRESENTS WITNESS, that the said A. B. and C. D., their executors, administrators, and assigns, shall and will stand and be possessed of and interested in the said sum of £—— £3 per cent. Consolidated Bank Annuities, and the dividends thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations upon, for, with, under, and subject, to which the same ought to be held under the said will of the said [*testator*]. IN WITNESS &c.

—of investment to answer the legacy;

—and the accumulation of the dividends.

Witnesseth, declaration of trust.

LXXXIX.

DECLARATION *of* TRUST *of* STOCK *invested in the names of Trustees as a* COLLATERAL SECURITY *for* MORTGAGE DEBTS (*a*).

DECLARATION OF TRUST OF STOCK AS A COLLATERAL SECURITY ON A MORTGAGE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*mortgagor*], of the first part; C. D., of &c., [*first*

Parties.

Method of providing the in-

(*a*) When a reversion or other estate not producing an income, is mortgaged, it is sometimes required that the mortgagor shall invest a sum

DECLARATION OF TRUST OF STOCK AS A COLLATERAL SECURITY ON A MORTGAGE.

mortgagee], of the second part; E. F., of &c., G. H., of &c., and I. K., of &c., [*second mortgagees*], of the third part; and L. M., of &c., and N. O., of &c., [*trustees*], of the fourth part. WHEREAS &c. [*Recital of the first mortgage with the proviso and covenant at length as in the case of the second mortgage, infra—of a collateral security made by a sum of stock transferred into the names of L. M. and N. O., upon trusts similar to those of the present deed—recital of the second mortgage*]: And in the indenture now in recital was contained a proviso for redemption of the said premises on payment by the said A. B., his heirs, executors, administrators, or assigns, to the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, of the sum of £—— and the sum of £—— as and for one year's interest for the same, at the rate of £—— for £100 for a year, making together the sum of £——, in the parts, shares, and proportions, and on or at the days or

Recital of a mortgage, and of a sum of stock held as a collateral security, and of a second mortgage;

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of money in the names of trustees, to secure the payment of the interest: and the precedent in the text is the declaration of trust of a sum of money so invested.

terest on the mortgage of an estate not producing income.

The objection to the measure is, that as the sum invested is always part of the money lent, and does not, in fact, pass at all into the hands of the mortgagor, the mortgagee takes from the mortgagor interest on a sum which the latter does not get the control of; and that, therefore, the transaction is liable to be set aside for usury, if the mortgagee receives a larger sum for interest, than what the interest of the sum actually paid to the mortgagor would amount to at £5 per cent. Whether this objection is valid remains to be decided. In the mean time, as the practice is convenient, and not attended with much risk when entered into with respectable parties, it has been deemed right to insert the above Precedent, with this caution as to its employment.

Objection to the method.

The declaration of trust should, of course, anxiously avoid disclosing that the money invested is part of the money lent, and the money to be invested should be actually paid to the mortgagor or his agent, and be invested by the direction of the mortgagor. Of course, where it can be accomplished, it is right that the investment should be made by the mortgagor out of his own money, or money temporarily lent him by a third person, before the completion of the mortgage; and the mortgagee and his solicitor should know as little as may be of the real nature of the transaction.

Precautions to be taken in effecting.

DECLARATION OF TRUST OF STOCK AS A COLLATERAL SECURITY ON A MORTGAGE.

times thereinafter mentioned; (that is to say), the sum of £——, being half a year's interest for the said sum of £—— at the rate aforesaid, on the —— day of —— next ensuing the date of the said indenture now in recital, which will be in the year ——, and the sum of £—— residue thereof, being the whole of the said principal sum of £——, and another half year's interest for the same at the rate aforesaid, on the —— day of —— then next following, which will be in the year ——, without any deduction or abatement whatsoever; And the said A. B. did thereby for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their executors and administrators, that he, the said A. B., his heirs, executors, or administrators, would pay or cause to be paid to the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, the aforesaid sum of £——, in the parts, shares, and proportions, and on or at the days or times in the aforesaid proviso mentioned or appointed for payment thereof, without any deduction or abatement whatsoever, according to the true intent and meaning thereof; And, in case the said principal sum of £—— should not be paid at the time thereinbefore mentioned or appointed for payment thereof, would during so long as the said sum of £—— or any part thereof should remain due on the security of the said indenture now in recital, pay or cause to be paid to the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, interest for the said sum of £——, or for so much thereof as for the time being should remain unpaid, after the rate of £—— per cent. per annum, by equal half yearly payments, on the —— day of —— and the —— day of —— in every year: AND WHEREAS the said sum of £——, £3 per cent. Consolidated Bank Annuities, has been reduced to the sum of £—— like annuities by sales thereof in pursuance of the trusts of the said indenture of the —— day of ——: AND WHEREAS, upon the treaty for the advance by the said C. D. of the said sums of £—— and £——, making together the sum of £——, intended to be

—of the former sum of stock being reduced to £——;

—of the agreement for a further investment;

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secured by the said indenture of even date herewith as aforesaid, it was agreed that the said A. B. should transfer or cause to be transferred the sum of £——, £3 per cent. Consolidated Bank Annuities into the names of the said L. M. and N. O. (*b*); And that the said L. M. and N. O., their executors, administrators, and assigns, should stand and be possessed of and interested in the said sum of £——, £3 per cent. Consolidated Bank Annuities, [*the residue of the former stock*], and of the said sum of £——, like annuities, [*the newly invested stock*], upon the trusts hereinafter declared: AND WHEREAS, in pursuance of the said agreement the said A. B. hath caused to be transferred into the names of the said L. M. and N. O. the sum of £——, £3 per cent. Consolidated Bank Annuities, making together with the said sum of £——, £3 per cent. Consolidated Bank Annuities the sum of £—— like annuities. NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement and in consideration of the premises, it is hereby agreed and declared between and by the parties to these presents, that the said L. M. and N. O., their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sum of £——, £3 per cent. Consolidated Bank Annuities so standing in their names as aforesaid, and of the dividends and annual produce thereof, UPON and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of and concerning the same; (that is to say), UPON TRUST, that they, the said L. M. and N. O., and the survivor of them, and the executors and administrators of such survivor, their or his assigns, do and shall, in the mean time, and until default shall be made in payment by the said A. B., his heirs, executors, or administrators, of the interest of the said sum of £——, or some part thereof, or of the interest of the said sum of £——, or some part thereof, for —— calendar months after the respective

—of the investment accordingly.

Witnesseth declaration of trust of the stock.

To allow the mortgagor to receive the dividends until default be made in payment of the interest of the mortgage-money;

(*a*) See supra, p. 626, n. *a*.

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half-yearly days of payment of such interest respectively, pay and apply the dividends and annual produce of the said trust-stock unto, or permit the same to be received by the said A. B., his executors, administrators, or assigns, for his and their own use and benefit; BUT, IN CASE any such default of payment of interest as aforesaid shall be made by the said A. B., his executors, administrators, or assigns, do and shall, from and after such default shall be so made, and thenceforth, during so long as the said sums of £—— and £——, or either of them, or any part thereof respectively, shall remain owing on the said securities for the same respectively, receive and take the dividends and annual produce of the said trust-stock, or of such part thereof, as for the time being shall not have been sold under the provisions and trusts hereinafter contained, and do and shall, by and out of the same, and by the monies arising from the sales hereinafter directed to be made of the said trust-stock, IN THE FIRST PLACE pay and satisfy the interest, or so much of the interest as for the time being shall be in arrear of the said principal sum of £——, or of such part thereof as shall for the time being be due and unpaid; AND IN THE NEXT PLACE, pay and satisfy the interest of the said principal sum of £——, or of such part thereof as shall for the time being be due and unpaid, as and when the half yearly payments of such interest respectively shall from time to time respectively become due and payable according to the true intent and meaning of the said respective securities for the said sums of £—— and £——; AND SUBJECT and without prejudice to the trusts aforesaid, do and shall stand and be possessed of and interested in the said stock so standing in the names of the said trustees as aforesaid, and the dividends and annual produce thereof, IN TRUST for the said A. B., his executors, administrators, and assigns, for his and their own proper use and benefit: PROVIDED ALWAYS, and it is hereby agreed and declared, between and by the parties to these presents, that, when and so often as the dividends and annual produce of the trust-stock for the time being held upon the trusts aforesaid, shall not be sufficient to pay and

—and after default in trust to receive the dividends.

—and pay the interest of the first mortgage;

—and of the second mortgage;

—subject thereto in trust for the mortgagor.

Power for the trustees to sell the capital of the stock, and apply the produce in discharge of the

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satisfy so much as shall not be paid by the said A. B., his heirs, executors, or administrators, of such half-yearly payments of interest of the said sums of £—— and £——, or of such of them as shall for the time being remain unpaid as aforesaid, as and when the same respectively shall become due, then and so often as the same shall happen, the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, their or his assigns, do and shall from time to time, and so often as any such deficiency shall arise, make sale and dispose of a competent part or parts of the trust-stock for the time being held upon the trusts aforesaid, and pay and apply the monies arising thereby in the first place in making up such deficiency or deficiencies for the time being of the interest of the said sum of £——, or of so much thereof as shall remain unpaid, and in the next place in making up the deficiency or deficiencies of the interest for the time being of the said sum of £——, or of so much thereof as shall remain unpaid, so that thereby and by and out of the dividends and annual produce of the said trust-stock for the time being held upon the trusts aforesaid, the said half-yearly payments of interests of the said sums of £—— and £——, or of so much of the same sums respectively as shall for the time being remain unpaid, may be duly and regularly satisfied as and when the same respectively shall from time to time become due and payable: PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that if at any time during such time as the said sum of £——, or any part thereof, or the said sum of £——, or any part thereof, shall continue due upon the said respective securities for the same, and the persons or person entitled to the said sums of £—— or £—— respectively, shall, by any writing under their or his hands or hand respectively, give notice to the said A. B., his executors or administrators, to pay the said principal sums of £—— and £——, or either of them, or so much of either of them as shall for the time being remain due and owing on the said securities respectively, or leave such notice at the usual or last known place of abode of the said A. B.,

interest on the mortgages.

Power for the trustees upon request by the mortgagees, and after notice to the mortgagor, to sell the stock, and apply the produce in discharge of the principal of the mortgage debts.

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his executors or administrators, and the said A. B., his heirs, executors, administrators, or assigns, shall not within the space of six calendar months after such notice, pay or cause to be paid unto the person or persons giving or leaving such notice, or other the person or persons for the time being entitled to receive the money in respect of which such notice shall have been given, all and every the monies to pay which such notice shall have been given or left as aforesaid, then the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, their or his assigns, do and shall at any time or times after the expiration of the said six calendar months at the request of the person or persons for the time being entitled to receive the money for the payment of which such notice shall have been so given or left as aforesaid, make sale and absolutely dispose of all and singular the trust-stock for the time being standing in their or his names or name, and pay and apply the monies arising therefrom (so far as the same will extend), or a competent part thereof, IN THE FIRST PLACE in or towards paying and satisfying the said sum of £——, or so much thereof as shall for the time being remain unpaid and all interest for the same; AND IN THE NEXT PLACE in paying and satisfying the said sum of £——, or so much thereof as for the time being shall remain unpaid, and all interest for the same; AND DO AND SHALL render and pay the surplus (if any) unto the said A. B., his executors, administrators, and assigns, to and for his and their own use and benefit; AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, and as a separate covenant with the said parties hereto of the third part, their executors and administrators, that, in case the whole of the said sums of £—— £3 per cent. Consolidated Bank Annuities already invested as aforesaid, or of any sum or sums of £3 per cent. Consolidated Bank Annuities which shall hereafter be invested in pursuance of the covenant of the said A. B. in this behalf, shall be exhausted in the lifetime of

Covenant by the mortgagor from time to time, if required, to make fresh investments of stock.

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the said A. B. in performance of the trusts hereinbefore declared before the whole of the said sums of £—— and £——, and all interest for the same respectively shall be paid and satisfied, Then and in such case, and immediately after such exhaustion as aforesaid, and so often as the same shall happen, he, the said A. B., shall and will invest, or cause to be invested, in the names or name of the said L. M. and N. O., or the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents, in the purchase of £3 per cent. Consolidated Bank Annuities, such sum of money as shall be equal to one-sixth part of the aggregate amount of the money which shall for the time being remain due on the said respective securities for the said sums of £—— and £——: AND IT IS HEREBY AGREED AND DECLARED between and by the parties to these presents, that the said L. M. and N. O., and the survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents, shall stand and be possessed of and interested in the £3 per cent. Consolidated Bank Annuities, which shall be invested in their or his names or name, in pursuance of the covenant lastly hereinbefore contained, and the dividends and annual produce thereof, Upon the like trusts for securing the repayment of the said sums of £—— and £——, or such of them, and such parts thereof as for the time being shall remain unpaid, and for payment of the interest thereof respectively, as are hereinbefore declared of and concerning the £3 per cent. Consolidated Bank Annuities, and the dividends and annual produce thereof, the trusts whereof are hereinbefore declared, and subject thereto, do and shall stand and be possessed of and interested in the said £3 per cent. Consolidated Bank Annuities, to be invested in pursuance of the covenant lastly hereinbefore contained, and the dividends and annual produce thereof, In trust for the said A. B., his executors, administrators, and assigns, for his and their own use and benefit. [*Power to appoint new trustees given to the surviving or continuing trustee, his executors or administrators,*

Declaration, that the stock to be so invested is to be held on the same trusts as the former stock.

Trustee clauses.

DECLARATION OF TRUST OF STOCK AS A COLLATERAL SECURITY ON A MORTGAGE.

"with the consent in writing of the said A. B., his executors or administrators, and the persons or person for the time being, entitled to the said sums of £—— and £—— respectively, or such part thereof, as shall for the time being remain payable;" *supra, p.* 511. *Clauses for the indemnity of the trustees and the payment of their expenses, supra, p.* 513]. IN WITNESS &c.

XC.

SEPARATION DEED.

DEED *of* SEPARATION *between* HUSBAND *and* WIFE. ASSIGNMENT *by the* HUSBAND *to* TRUSTEES *for the* WIFE *of certain Property bequeathed to the* WIFE, *and* RELEASE *to the* TRUSTEES *of the* WILL *in respect of previous Payments to the* WIFE, *without the Privity of the* HUSBAND (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*husband*], of the first part; C. B., of &c., [*wife*], of

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Separation deeds between husband and wife;

(*a*) A court of equity will not carry into execution articles of separation between husband and wife, but it will give effect to engagements between the husband and a third party, although merely accessary to the agreement for separation. *Lord St. John* v. *Lady St. John*, 11 Ves. 529; *Worrall* v. *Jacob*, 3 Mer. 256, 268. A separation deed, therefore, usually contains covenants by the husband with a third party, to allow the wife to live separately, and enjoy property as a feme sole, and some provision (by covenant of the husband or otherwise) for the separate maintenance of the wife. On the other hand, the third party covenants with the husband, that the wife shall live separately, and to indemnify him against the wife's debts. It is well settled, that the trustee's covenant to indemnify is a valuable and sufficient consideration for a covenant by the husband to pay an annuity to his wife. *Stephens* v. *Olive*, 2 B. C. C. 90; *Worrall* v. *Jacob*, 3 Mer. 269; *Jee* v. *Thurlow*, 2 B. & C. 547; *Wellesley* v. *Wellesley*, 10 Sim. 256; and the husband's executing a deed of separation is a legal and sufficient consideration for a promise by a third

SEPARATION DEED.

the second part; and E. F., of &c., and G. H., of &c., [*trustees for the wife*], of the third part: [*Recital of a will and codicil of the wife's father, giving to the wife a legacy of £——, and certain specific legacies; and under which the wife is entitled in reversion expectant on the death of a tenant for life to a sum of £—— 3l. 10s. per cent. Reduced Bank Annuities, and in reversion expectant on another event to a sum of £—— £3 per cent. Consolidated Bank Annuities, and to the income for her life of a sum of £—— 3l. 10s. per cent. Bank Annuities, which is given to her children after her death, and to an absolute share in possession of the general residue; and by which E. F. and G. H. were appointed executors*]: AND WHEREAS the said testator died shortly after the date and execution of his said codicil without having revoked or altered his said will or codicil, except so far as the said will was altered by the said codicil, and the same were on the —— day of —— proved by the said E. F. and G. H. in the

—Recital of a will, under which the wife is entitled to certain property;

—of the death of the testator, and probate of his will and codicil;

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person to pay debts and expenses incurred by the wife, for which the husband was liable. *Jones* v. *Waite*, 5 Bing. N. C. 341; S. C., in the court below, nom. *Waite* v. *Jones*, 1 Bing. N. C. 656. The wife, too, may, on a separation, bind herself as to any separate property she may possess; *Logan* v. *Birkett*, 1 My. & Kee. 220; and th release by the husband of his marital right in the future acquired property of the wife is a good consideration for an annuity granted him by the wife out of her separate property. Ib. An agreement, however, by a wife to waive the prosecution of an indictment against the husband for an assault, in consideration of his allowing her an annuity for her separate use, is illegal. *Garth* v. *Earnshaw*, 3 You. & Coll. 584.

—must contemplate an immediate, not a future, separation;

Separation deeds must always contemplate an existing or immediate separation; no deed providing unconditionally for a future separation is valid. *Durant* v. *Titley*, 7 Price, 577; *Lord St. John* v. *Lady St. John*, 11 Ves. 538. It is questionable, however, whether a deed providing only conditionally for a future separation may not be valid. *Lord St. John* v. *Lady St. John*, ubi supra; *Rodney* v. *Chambers*, 2 East, 283.

—vacated by a temporary reconciliation.

A separation deed is absolutely vacated by a temporary reconciliation or cohabitation. *Fletcher* v. *Fletcher*, 2 Cox. 99; *Durant* v. *Titley*, 7 Price, 577; *Hindley* v. *Marquess of Westmeath*, 6 B. & C. 200; *Marquess of Westmeath* v. *Marchioness of Westmeath*, 1 Dow. N. S. 519.

See further on the subject of separation deeds Roper's Law of Husband and Wife, Jacob's edition, Ch. 22, p. 267 et seq.

SEPARATION DEED.

Prerogative Court of the Archbishop of Canterbury: AND WHEREAS the said E. F. and G. H., shortly after the death of the said testator, sold and converted into money all such parts of the said testator's personal estate as did not consist of ready money, or were not specifically bequeathed, (except such of the sums of stock hereinafter mentioned to have been appropriated as belonged to the said testator), and also sold the said freehold and leasehold hereditaments; and by and out of the monies arising from such sales and conversion into money of the said real and personal estate, and the ready money of which the said testator was possessed at his death, paid his funeral and testamentary expenses and debts, and paid and satisfied the legacies of stock and money given by the said will and codicil, and the cost of the said mourning rings thereby directed to be presented: AND WHEREAS the said trustees appropriated and transferred into their own names the sum of £—— 3*l.* 10*s.* per cent. Reduced Bank Annuities, to answer the dividends given by the said will to the said C. B., and the sum of £——, £3 per cent. Consolidated Bank Annuities, set apart to answer the annuity of £—— given by the said will to the said ——, and the sum of £——, 3*l.* 10*s.* per cent. Reduced Bank Annuities, to answer the trusts by the said will declared of the same, for the benefit of the said C. B. and her children, and delivered to the said C. B., and the other specific legatees, the several articles by the same will specifically bequeathed to them respectively, and paid to the said C. B., her said legacy of £——: AND WHEREAS the said trustees laid out the share of the said C. B. in the residue which remained after making the several payments and appropriations aforesaid of the monies produced by the real and personal estate of the said testator, in the purchase in their own names of the sum of £——, 3*l.* 10*s.* per cent. Reduced Bank Annuities, and paid the dividends thereof from time to time to the said C. B., up to the month of ——, 18—; AND WHEREAS the said trustees, at the request of the said C. B., have sold out the sum of £——, 3*l.* 10*s.* per cent Reduced Bank Annuities, part of the said sum of £——, like

—that the executors have got in, sold, and converted the testator's property, and paid his funeral and testamentary expenses, debts, and legacies;

—and appropriated certain sums of stock to answer legacies of stock, and given up the specific legacies to the legatees;

—that the trustees have invested the wife's share of residue in the funds, and have paid her the dividends up to a given day;

—that the trustees have sold part of the stock, and ad-

annuities, and paid the sum of £——, the net monies arising by such sale, to the said C. B., to enable her to fit out her youngest son for India, and the sum of £——, 3*l.* 10*s.* per cent Reduced Annuities, the residue of the said sum of £——, like annuities, then remained standing in the names of the said trustees: AND WHEREAS unhappy differences long since arose between the said A. B. and C. B., and the said A. B. and C. B. have in consequence long lived separate from each other (*b*), and the delivery to the said C. B. of the several articles by the said will specifically bequeathed to her, and the payment to her of the said legacy of £——, and of the dividends of the said sum of £——, 3*l.* 10*s.* per cent. Reduced Bank Annuities, and of the said sum of £—— were all made without the privity of the said A. B.: AND WHEREAS on the —— day of ——, 18—, the said C. B. filed her bill in the High Court of Chancery against the said A. B., E. F., G. H., and —— [*persons interested under the will*], praying that an account might be taken of the personal estate and effects of the said testator which had been possessed by or come to the hands of the said E. F. and G. H., as such executors as aforesaid, or which, without their, or either of their wilful default or neglect might have been possessed or received by them, and that the same might be applied by them in a due course of administration; and that the several articles specifically bequeathed to the said C. B. by the said will might be delivered to her, and that the same might be so settled, as that the said C. B. might hold and enjoy the same to her separate use, and free from the debts, contracts, and engagements of the said A. B.; And that the share to which the said C. B.

—vanced the produce to the wife;

—that the husband and wife have long lived separate, and that the payments to the wife have been without the husband's privity or assent;

—of the wife having filed a bill in Chancery;

(*b*) The recitals in the present case as to the intention to live separate vary somewhat from the usual form on account of the bill in Chancery and other peculiar circumstances of the case. The ordinary recital runs— "And whereas unhappy differences have arisen and do subsist between the said —— and ——, by reason whereof they have agreed to live separately and apart from each other for the future."

Recital in ordinary separation deeds of the intention to live separately.

SEPARATION DEED.

would become entitled in the clear residuary estate of the said testator, might be settled under the direction of the said Court, so as that the interest and dividends thereof might be paid to her for her separate use during her life, and free from the debts, controul, and engagements of the said A. B., with remainder to her, the said C. B., in such manner as she might appoint; or that such clear residue, or a proportion thereof, or of the dividends and interest thereof might be settled so as that she, the said C. B., might receive the dividends and interest thereof for her separate use during her life, with remainder as to the part so settled to the said C. B.'s appointment among her said children; and that the said C. B. might have such further and other relief as the nature of the case might require, and to the said Court should seem meet: AND WHEREAS the said A. B. and C. B. have agreed to live separately and apart from each other for the future, and have agreed to enter into the arrangement hereinafter more particularly mentioned and intended to be effected by these presents (*c*): AND WHEREAS in order to induce the said A. B. to enter into such arrangement, it was agreed that the sum of £—— should be raised by the said trustees of the hereinbefore recited will, by sale of part of the said sum of £——, 3*l.* 10*s.* per cent. Reduced Annuities, [*the remainder of the investment of the wife's share of residue*], and should be paid to the said A. B. for his own use, and that the said suit should not be prosecuted (*d*): AND WHEREAS the said trustees have accordingly sold the sum of £——, 3*l.* 10*s.* per cent. Reduced Annuities, part of the said sum of £—— like annuities, and have paid the sum of £——, the net monies arising from such sale, unto the said A. B., immediately before the execution of these presents, so that the sum of £——, 3*l.* 10*s.* per cent. Reduced Bank Annui-

—of the agreement to live separate in future, and to enter into the present arrangement;

—of the agreement to sell part of the wife's share of residue, and pay the produce to the husband;

—of the sale and payment accordingly;

(*c*) See supra, p. 637, n. *b*.

(*d*) It does not vitiate the trustee's covenant that money belonging to the wife is paid to the husband as part of the arrangement on the treaty for the separation. *Jones* v. *Waite*, 5 Bing. N. C. 341. See supra, p. 635 n.

Payment of money to the husband as part of a separation contract not illegal.

SEPARATION DEED.

ties only now remains standing in the names of the said trustees: AND WHEREAS, as a further part of the said arrangement, the said A. B. hath assented to and confirmed the delivery to the said C. B. of the several articles bequeathed to her by the said will, and the payment to her of the said legacy of £——, and of the dividends of the said sum of £——, *3l.* 10*s.* per cent. Reduced Bank Annuities, and of the said sum of £——, and hath agreed to execute such release in respect of the same, and of the share or interest of the said C. B. in the residuary estate of the said testator, as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement on the part of the said A. B., and for effectuating the said arrangement, and in consideration of the covenants hereinafter contained on the part of the said E. F. and G. H., and of the said sum of £—— so paid to the said A. B. as aforesaid, he the said A. B., doth for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors and administrators by these presents in manner following, (that is to say), THAT notwithstanding the marriage that has been had and solemnized between the said A. B. and C. B., It shall be lawful for the said C. B. from time to time, and at all times hereafter, to live separate and apart from him the said A. B. in such sort and manner as if she were sole and unmarried; and that he the said A. B. shall not, nor will, compel, nor endeavour to compel her to cohabit or live with him by any ecclesiastical censures or proceedings, or otherwise howsoever; and that she the said C. B. shall be absolutely, and to all intents and purposes whatsoever, freed and discharged from the power, command, will, restraint, authority, and government of him the said A. B.; and that he shall not, nor will at any time hereafter, by any cause, or under any pretence whatsoever, sue or prosecute any person or persons for receiving, harbouring, protecting, or assisting the said C. D., or ill-treat, or use or offer any violence, force, or restraint to the person of her the said C. B., or molest, interrupt, or disturb her in her way of living, or in her liberty or freedom of going to, or staying in, or return-

—of the husband's assent to the previous payments to the wife, and agreement to execute release.

Covenant by the husband with trustees;

—that he will allow the wife to live separate, and discharged from the marital control;

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ing from such place or places as she shall think fit; AND ALSO, that it shall be lawful for the said C. B. from henceforth to have, take, and enjoy to her own separate and absolute use, notwithstanding her coverture, all such jewels, plate, furniture, clothes, linen, wearing apparel, ornaments, articles, and things whatsoever, as have been, or at any time or times hereafter shall be bequeathed, or given to her, or which she may derive as of kin to any person or persons, or may purchase, or which are or shall be in any manner hers, or reputed hers, or which she shall save (*e*) for her separate use from the provision made by these presents, or by the said will of her said father, or by any other settlement, will, or otherwise, either already made or hereafter to be made, and from time to time by deed or will, or from hand to hand, to sell, give away, or dispose of the same: AND THAT, if the said C. B. shall depart this life in the lifetime of the said A. B., he, the said A. B., shall and will permit the last will and testament of the said C. B., or any writing in the nature of or purporting to be her last will and testament, or codicil or codicils thereto, to be proved in the proper ecclesiastical court by the person or persons to be therein named and appointed the executor or executors thereof; and that if the said C. B. shall not name an executor or executors of her said will, or such executor or executors shall die in her lifetime, or refuse to prove her said will, or to act in the executorship thereof; or if the said C. B. shall die intestate as to all or any part of the estate and effects by these presents assigned or declared or directed to be to or for her separate use or disposal, he, the said A. B., shall and will permit administration of the goods and chattels, rights and credits of the said C. B., to be taken out by the person or persons who would be entitled thereto if the said A. B. were then dead, leaving the said C. B. him surviving; AND

—and to enjoy separate property;

—and to permit the wife's will to be proved, or administration to her taken out;

—and her pro-

Destination of savings from wife's separate income.

(*e*) See ante, Vol. 4, p. 486, n. *p.* In a case, however, in which the husband and wife lived separately, and the wife died in the husband's lifetime possessed of cash and bank notes arisen from property settled to her separate use, it was held that the husband was entitled to them in his marital right. *Molony* v. *Kennedy*, 10 Sim. 254.

SEPARATION DEED.

SHALL and will permit the said estate and effects of the said C. B., or any part thereof of which she shall die intestate, to be distributed among the persons, and in the manner, among whom and in which the same by the statute for the distribution of the estates of intestates would be distributable, if the said A. B. were then dead leaving the said C. B. him surviving: AND THAT all such estate, real and personal, as during the joint lives of the said A. B. and C. B. shall descend or come to, or devolve upon her the said C. B., as of kin to any person or persons or otherwise, or be given or devised, or bequeathed or conveyed to or in trust for her the said C. B., or to, for, or upon him the said A. B. in right of the said C. B., shall be held, enjoyed, sold, given away, devised, bequeathed, and disposed of by the said C. B., her heirs, executors, administrators, and assigns respectively, according to the several natures and qualities thereof respectively, in such manner as she or they shall think fit, without being subject to the debts, controul, claims, custody, or intermeddling of him the said A. B., as if the said A. B. were then dead, leaving the said C. B. him surviving: AND ALSO THAT the said A. B. shall and will, for that purpose, make, do, and execute all such acts, deeds, devices, and assurances in the law whatsoever for confirming and corroborating these presents, and every clause, matter, and thing herein contained, as by the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or their or his counsel in the law, shall be reasonably advised or devised and required. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for further effectuating the said arrangement, and for the considerations aforesaid, he, the said A. B., at the request and with the consent of the said C. B., (testified by her being a party to and executing these presents), doth by these presents assign and confirm unto the said E. F. and G. H., their executors, administrators, and assigns, ALL THAT the said sum of £—— 3*l.* 10*s.* per cent. Reduced Bank Annuities, now remaining standing in the names of the said E. F. and G. H. as aforesaid, [*the remainder of the investment of*

property to be distributed as if the husband were dead;

—and that all property to which the wife may become entitled shall be held as her separate property;

—and do all acts necessary to effectuate such agreement.

Witnesseth further, assignment by the husband of the wife's property under the will to the trustees.

SEPARATION DEED.

the wife's share of residue], and all the dividends and annual income henceforth to accrue due therefrom; AND ALL THAT the part, share, or interest to which the said C. B., or the said A. B. in her right, is entitled or interested in reversion expectant, on the death of the said ——, of or in the said sum of £—— 3*l.* 10*s.* per cent. Reduced Bank Annuities, and the dividends and annual income thereof; and of or in the said sum of £—— 3*l.* per cent. Consolidated Bank Annuities, and the dividends and annual income thereof; and of or in the monies to arise from the sale of the several articles by the said will directed to be sold, or which will become saleable on the death of the said ——; and of or in all and every other the parts or part (if any) of the said residuary estate of the said testator which may not yet have been divided among the said residuary legatees under the said will and codicil: AND ALL THE ESTATE, right, title, interest, property, possession, claim, and demand whatsoever, both at law and in equity, of him the said A. B., of, in, to, out of, or upon the said premises, or any of them, or any part or parts thereof: TO HAVE AND TO HOLD the said sum of £—— 3*l.* 10*s.* per cent. Reduced Bank Annuities, and the dividends and annual proceeds thereof, and the part, share, or interest, and all and singular other the premises hereinbefore assigned, or expressed and intended so to be, unto the said E. F. and G. H., their executors, administrators, and assigns, UPON TRUST for such person and persons, and for such intents and purposes as the said C. B. shall, notwithstanding her coverture, from time to time, or at any time direct or appoint; and in default of and until such direction or appointment, and so far as no such direction or appointment shall extend, UPON TRUST for the said C. B., for her sole and separate use, independently and exclusively of the said A. B., and of his debts, controul, interference, and engagements, and so that the receipt or receipts of the said C. B. and her appointees may be good and effectual discharges for the monies and premises hereinbefore assigned or expressed, and intended so to be, and every part thereof. AND THIS INDENTURE ALSO WITNESSETH,

And all the estate, &c.

Habendum to the trustees.

Upon such trusts as the wife shall appoint;

—and in default of appointment, for the separate use of his wife.

Witnesseth fur-

that, in further pursuance of the said agreements, and for further effectuating the said arrangement, and for the considerations aforesaid, He, the said A. B., doth by these presents acquit, release, and discharge the said E. F. and G. H., and each of them, their and each of their heirs, executors, and administrators, estates and effects; and also the estate and effects of the said —— of and from the said several articles, and the said legacy of £—— by the said will bequeathed to the said C. B., and of and from the dividends and annual proceeds of the said sum of £—— *3l.* 10*s.* per cent. Reduced Bank Annuities, and the said sum of £——, produced by the sale of part of the same sum, and of and from the share, part, and interest given to the said C. B. of or in the said residuary estate of the said testator, and every part thereof, and of and from the said sum of £—— so paid to him, the said A. B., as aforesaid, and of and from all actions, suits, accounts, reckonings, claims, and demands whatsoever, either at law or in equity, or otherwise for, upon account, or in respect of the several articles bequeathed to the said C. B. by the said will, or any of them, or the said legacy of £—— thereby bequeathed to her, or the dividends and annual proceeds of the said sum of £—— *3l.* 10*s.* per cent. Reduced Bank Annuities, or the said sum of £—— paid to the said C. B., or the share, part, or interest given by the said will and codicil to the said C. B. in the residuary estate of the said testator, or for, upon account, or in respect of any act, matter, or thing, in anywise relating to the premises.

ther, release by the husband to the trustees in respect of past transactions.

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for further effectuating the said arrangement, and in consideration of the covenants and release hereinbefore contained on the part of the said A. B., they, the said E. F. and G. H., do for themselves, their heirs, executors, and administrators, and each of them doth, for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors and administrators, by these presents in manner following; (that is to say), THAT the said C. B. shall not at any time hereafter molest or disturb the said A. B., and shall not nor will compel nor endeavour to compel him to

Witnesseth further, covenants by the trustees with the husband;

—that the wife shall not molest the husband;

SEPARATION DEED.

cohabit or live with her by any ecclesiastical censures or proceedings or otherwise howsoever: AND FURTHER, that they, the said E. F. and G. H., or one of them, their or one of their heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified the said A. B., his heirs, executors, and administrators, and his and their estates and effects of, from, and against all and every the debts and liabilities which the said C. B. hath already contracted or incurred, or shall at any time or times hereafter contract or incur, and of and from all actions, suits, accounts, reckonings, claims, and demands, costs, charges, losses, damages, and expenses, for, upon account, or in respect of such debts and liabilities, or any of them, or any act, deed, matter, or thing in anywise relating to the premises (*f*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the parties to these presents, that nothing herein contained shall be construed or taken to prejudice or affect the provisions made for the said C. B. previously or subsequently to her said marriage. IN WITNESS &c.

—and to indemnify the husband against the wife's debts and engagements.

Other provisions for the wife not to be affected by this deed.

(*f*) The covenants by the trustee are essential as forming the consideration for the provision made by the husband, see supra, p. 634, n. *a*.

XCI.

APPOINTMENT OF GUARDIANS.

APPOINTMENT *by* INFANTS *of their own* GUARDIANS.

Deed-poll by infants, appointing guardians for themselves.

KNOW ALL MEN by these presents, that we, G. H., I. K., L. M., and N. O., of &c., four of the children of ——, late of &c., now deceased, and of —— his wife, now also deceased, and infants under the age of twenty-one years, and of or about the ages of —— years, —— years, —— years, and —— years respectively, have respectively

elected, nominated, and appointed, and by these presents do respectively elect, nominate, and appoint U. V., of &c., X. Y., of &c., and Y. Z., of &c., and the survivors and survivor of them, guardians and guardian of us, the said G. H., I. K., L. M., and N. O. respectively, and of our respective estates both real and personal, during our respective minorities. IN WITNESS &c. (*a*).

APPOINTMENT OF GUARDIANS.

(*a*) Infants may appoint their own guardians (called guardians by election) when they are wholly unprovided with guardians. This may happen either before they attain the age of fourteen, when they have no such property as attracts a guardianship by tenure, and their father is dead without having executed his power of appointing a guardian, and their mother is also dead; or after fourteen, when the custody of the guardians by socage ceases and no other guardian has been appointed. It is said, however, that an infant under the age of fourteen cannot appoint a guardian. Fitzg. 164. A guardian by election is usually appointed by deed under the hands and seals of the infants. Harg. Co. Lit. 88 b. n. 16; and such guardianship terminates as to a male at twenty-one, and as to a female at twenty-one or marriage. *Mendes* v. *Mendes*, 3 Atk. 625; S. C.; 1 Ves. sen. 91; *Roach* v. *Garvan*, 1 Ves. sen. 157. The appointment by an infant of a guardian is usually made for the purpose of enabling leases to be granted of the infant's lands (it being understood that such leases are good during the continuance of the guardianship. *Roe* v. *Hodgson*, 2 Wils. 129, 135); or to appoint new trustees of settlements or wills, when, as is sometimes the case, the power is given to the guardians of the infant cestui que trusts, or for other formal purposes. In some forms the appointment specifies the powers the guardians are to have, but this is wrong; the infant can only name the guardian—the powers are derived from the law.

Guardians—appointment of, by infants themselves;

The Court of Chancery may remove any kind of guardian, if he misconduct himself; *Goodall* v. *Harris*, 2 P. Wms. 560; *Duke of Beaufort* v. *Berty*, 1 P. Wms. 704; and the right of the Court of Chancery to appoint a guardian is never excluded by the infant's own appointment. *Curtis* v. *Rippon*, 4 Madd. 462.

—does not supersede the jurisdiction of the Court of Chancery.

See further on the subject of guardians by election, Harg. Co. Lit. 88 b. n. 16; Macpherson on Infants, Ch. vii., p. 76; Chambers on Infancy, pp. 70, 518.

XCII.

APPOINTMENT OF GAMEKEEPER.

APPOINTMENT *or* DEPUTATION *of a* GAMEKEEPER.

KNOW ALL MEN by these presents, that I, A. B., of &c., lord of the manor, or reputed manor of ——, in the county of ——, do, by virtue of the statute in this case made and provided, and of every power enabling me in this behalf, by this writing under my hand and seal, appoint, constitute, and authorize C. D., of &c., to be gamekeeper within the said manor, or reputed manor, to preserve and kill the game within the same for my use, with full power to seize and take for my use All such guns, dogs, nets, and other engines and instruments for the killing or taking of game within the limits of the said manor, or reputed manor, as shall be used within the said limits by any person or persons not authorized to kill game for want of a game certificate; And to do all and every act and thing within the limits of the said manor, or reputed manor, which I may authorize any gamekeeper to do. This authority to continue only during my goodwill and pleasure. Given under my hand and seal &c. (*a*).

(*a*) The appointment of gamekeeper is now regulated by the statute 1 & 2 Will. 4, c. 32, sects. 13, 14, 15; and by sect. 16 of the same statute, which provides, that all appointments of gamekeepers shall be registered with the clerk of the peace. See Leigh on the Game Laws, 2nd edit. p. 113. See, too, other forms of appointment of gamekeepers. Id. 155, 157.

XCIII.

PRESENTATION *to a* RECTORY.

PRESENTATION TO A RECTORY.

To the Right Reverend Father in God ——, by divine permission Lord Bishop of ——, or to his Vicar, general or spiritual, or to any other person having or that shall have sufficient authority in this behalf.

I, A. B., of &c., a minor, of the age of —— years, or thereabouts, the true and undoubted patron of the advowson of the rectory of ——, in the county of ——, and diocese of ——, do hereby, with the privity, consent, and approbation of ——, my guardian, appointed by the High Court of Chancery (*a*), present to your lordship, and to the said rectory of —— aforesaid, now become vacant by the death of X. Y., the last incumbent thereof, and to my presentation in full right belonging, my beloved in Christ, C. D., of &c., humbly praying that your lordship will be graciously pleased to admit and canonically institute him, the said C. D., to the said rectory of the parish church of —— aforesaid, and to invest him with all and singular its members and appurtenances thereto belonging, and to cause him to be inducted into the real, actual, and corporal possession thereof, and to do all other things which to your pastoral office in this case appertain and belong. IN WITNESS &c.

(*a*) The infant, however young, may present. Hargr. Co. Litt. 89 *a*, n. 1.

XCIV.

PETITION IN CASE OF ESCHEAT.

PETITION *to the* COMMISSIONERS *of the* TREASURY *in case of an* ESCHEAT.

To the Right Honourable the Lords Commissioners of Her Majesty's Treasury.

THE humble petition of A. B., of &c.

SHEWETH,

Statement of the will of a deceased illegitimate person;

THAT C. D., late of &c., was illegitimate, and that he made and duly published his last will and testament in writing, bearing date the —— day of ——, in manner and form following; (that is to say), "This &c. [*set out the will verbatim* (*including the attestation*), *by which all the testator's real and personal estate was devised to the petitioner upon certain trusts*]: THAT, subsequently to the date and execution of his will, the said C. D. contracted with E. F. and G. H., of ——, for the purchase of, Firstly, All &c. [*description of property, including the general words*]; all which said lands were by indentures of lease and release, bearing date respectively the —— and —— days of ——, conveyed by the said E. F. and G. H. to the said C. D., in consideration of £—— in the said indenture of release expressed to be paid by the said C. D. to the said E. F. and G. H., but the purchase-money for the same was not in fact paid, and the said E. F. and G. H. hold the said conveyance as security for such purchase-money.

—that the testator, after making his will, contracted for and took a conveyance of a certain estate;

—that the testator is dead;

THAT the said C. D. died without issue on or about the —— day of ——, and without having revoked or altered his said will.

—that the will has been proved;

THAT your petitioner proved the said will of the said C. D. in the —— Court of —— on the —— day of ——.

PETITION IN CASE OF ESCHEAT.

THAT the said testator C. D. left real property, exclusive of the land conveyed to him by the said indentures of the —— and —— days of ——, of the value of £——, and personal property of the value of £——; and that he owed debts, including the said debt of £—— to E. F. and G. H., to the amount of £——.

—of the value of the testator's property exclusive of that purchased after making his will;

THAT your petitioner is informed, that the said land purchased by the said testator in the year —— did not pass by his said will, the same having been purchased after the date and execution thereof, and that it has escheated to the Crown for want of heirs, the said C. D. having been illegitimate, and having died without issue.

—that the after-purchased land has escheated;

YOUR PETITIONER, therefore, humbly prays your lordships, that your lordships will be pleased to advise her Majesty to grant the lands which have so as aforesaid escheated to the Crown, and all arrears of rent due to her Majesty in respect thereof, to your petitioner, his heirs and assigns, upon the trusts to which the same would have been subject if the said lands had passed by the said will of the said C. D.; or that your lordships will be pleased to grant your petitioner such other relief in the premises as to your lordships shall seem meet.

Petition for a grant of the escheated lands.

AND YOUR PETITIONER will ever pray, &c. (*a*).

(*a*) The crown is empowered by the statutes 47 Geo. 3, sess. 2, c. 24, and the 59 Geo. 3, c. 94, to dispose of escheated property, not only in the manner desired by the petition in the text, but for other purposes. It is represented that, on a petition of this nature, the petitioner must make a deposit of £100 before the crown will take proceedings to seize.

XCV.

PETITION FOR A PRIVATE BILL.

PETITION *to the* HOUSE *of* LORDS *for Leave to bring in a* PRIVATE BILL (*a*).

TO THE RIGHT HONOURABLE THE LORDS SPIRITUAL AND TEMPORAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND IN PARLIAMENT ASSEMBLED.

THE HUMBLE (*b*) PETITION of A. B., of &c., and of C. D., of &c., on behalf of ——, the infant children of ——; and of E. F., of &c., on behalf of himself, and —— his infant children

SHEWETH,

That &c. [*stating the facts of the case in the words of the recitals of the bill*].

YOUR PETITIONERS, therefore, most humbly (*c*) pray, that your Lordships will give leave to bring into Your Right Honourable House a Bill for the purposes hereinbefore mentioned, or such further

(*a*) The petition will be intituled—"Petition for leave to bring in a Bill to be intituled 'An Act'" &c., setting out the title of the act. So the bill will be intituled—"A Bill to be intituled 'An Act'" &c.

(*b*) If the petitioner be a peer the word "humble" is omitted. If some of the petitioners are peers and others commoners, it will be—"The petition of [*the peer or peers*], and the humble petition of [*the commoner or commoners.*"]

(*c*) If the petitioner be a peer the words "most humbly" are omitted. If some of the petitioners are peers and others commoners, it will be—"Your petitioners, therefore, [*the peers*] pray, and your petitioners [*the commoners*] most humbly pray," &c.

or other relief as to your Lordships in your great wisdom shall seem meet. PETITION FOR A PRIVATE BILL.

AND YOUR PETITIONERS will ever pray, &c.

XCVI.

PETITION *to the* HOUSE *of* LORDS *for Leave to present a Petition for a* PRIVATE BILL *when the day for receiving Petitions for* PRIVATE BILLS *is passed.* PETITION FOR LEAVE TO BRING IN A PRIVATE BILL AFTER THE PROPER DAY.

TO THE RIGHT HONOURABLE THE LORDS SPIRITUAL AND TEMPORAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND IN PARLIAMENT ASSEMBLED.

THE HUMBLE (*a*) PETITION of A. B., of &c.

SHEWETH,

That &c. [*state the substance of the recitals of the bill, particularly as they shew that time is of importance*].

That the circumstances hereinbefore mentioned did not come to the knowledge of your petitioner until after the time limited by your lordships for receiving petitions for private bills had elapsed, and, if a bill for the aforesaid purposes were not to be passed during the present session of Parliament, your petitioner might lose the opportunity of making the said purchase.

YOUR PETITIONER, therefore, most humbly (*b*) prays, that permission may be granted him to

(*a*) See supra, p. 650, n. *b*. (*b*) See supra, p. 650, n. *c*.

PETITION FOR LEAVE TO BRING IN A PRIVATE BILL AFTER THE PROPER DAY.

present a petition for leave to bring in a bill for effectuating the purposes aforesaid, notwithstanding the time limited by this house for presenting petitions for private bills has elapsed.

AND YOUR PETITIONER will ever pray, &c.

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